TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 164

JAMES W. BOTHWELL, WILLIAM J. MICHEL, ET AL., RECEIVERS OF EMPLOYERS MUTUAL INSURANCE AND SERVICE COMPANY, PETITIONERS,

vs.

BUCKBEE, MEARS COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR CERTIORARI FILED JANUARY 26, 1927

CERTIORARI GRANTED MARCH 7, 1927

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( )

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IN SUPREME COURT OF MINNESOTA

JAMES W. BOTHWELL, WILLIAM J. MICHEL, C. STANLEY Hurlbut, William E. Thomsen, Arthur M. Siegk, Receivers of Employers Mutual Insurance and Service Company, Plaintiffs-Respondents,

vs.

BUCKBEE, MEARS COMPANY, Defendant-Appellant

Record

Settled Case from District Court of Ramsey County

PETITION AND ORDER PERMITTING INSTITUTION OF SUIT

To the honorable the judge of the said court:

The petition of James W. Bothwell, William J. Michel, C. Stanley Hurlbut, William E. Thomsen and Arthur M. [fol. 2] Siegk, Receivers of the Employers Mutual Insurance & Service Company, respectfully shows unto your Honor:

1. By order of the Circuit Court No. 2 of Baltimore City, Maryland, a Court of record, having general equity jurisdiction, your petitioners were appointed Receivers of the Employers Mutual Insurance & Service Company, and have duly qualified as such, and by subsequent order of said Circuit Court No. 2 of Baltimore City, were authorized and directed to bring any suit and to take any further action which they found necessary to secure the collection of unpaid assessments due to the said Employers Mutual Insurance & Service Company.

2. An assessment of $633.60 was duly made against Buckbee-Mears Company, a person or corporation subject to the jurisdiction of this Honorable Court. Notice of said assessment and demand therefor was made to him on or about June 30, 1921. Said assessment now remains unpaid except the sum of $— which has been paid.

3. A full statement of the circumstances under which the said liability for assessment arose is set forth in the declaration which is hereto attached.

4. No receivership or ancillary receivership of said Employers Mutual Insurance & Service Company has been granted or applied for in any Court of this State, and your petitioners believe and aver that the rights of no persons, citizens or residents of this State, will be prejudiced [fol. 3] by the passage of an order granting your petitioners permission to bring suit for the collection of the assessment aforesaid in this Honorable Court. That there are no creditors of said Employers Mutual Insurance and Service Company within this State whose rights or interest may be affected by this order.

Wherefore, your petitioners pray that an order may be passed herein, granting your petitioners permission to bring suit against Buckbee-Mears Company, who is subject to the jurisdiction of this Court upon the cause of action set forth in the annexed declaration.

And as in duty bound, etc.,

Barrows & Metcalf, Attorneys for Receivers of Employers Mutual Insurance & Service Company.

Duly sworn to by Wm. E. Thomsen. Jurat omitted in printing.

[fol. 4] Order

Upon the aforegoing petition and affidavit, it is this 18th day of June, 1924, by the District Court, ordered that permission be and it is hereby given James W. Bothwell, William J. Michel, C. Stanley Hurlbut, William E. Thomsen and Arthur M. Siegk, Receivers of the Employers Mutual Insurance & Service Company, to bring suit in this Court as prayed.

Charles Beehhoefer, Judge.

[fol. 5] Summons, June 19, 1924, omitted in printing.

COMPLAINT

To the honorable the judge of said court:

James W. Bothwell, of New York City, New York; William J. Michel, of Chicago, Illinois; C. Stanley Hurlbut, of Philadelphia, Pennsylvania; William E. Thomsen, of Baltimore, Maryland, and Arthur M. Siegk, of Baltimore, Maryland, Receivers of Employers Mutual Insurance & Service Company, a corporation of the State of Maryland, by their attorney sue Buckbee-Mears Company,

For money payable by the Defendant to the Plaintiffs.

And for further cause of action these Plaintiffs allege as follows:

(a) The Employers Mutual Insurance & Service Company is a mutual insurance company organized and existing under the laws of the State of Maryland, and was at the time the cause of action herein set forth arose engaged in the business of writing insurance known as "Strike Insurance."

[fol. 6] (b) On August 26, 1921, a bill of complaint was filed by Thomas J. Keating, Insurance Commissioner of the State of Maryland, against Employers Mutual Insurance & Service Company in the Circuit Court No. 2 of Balimore City, Maryland, a Court of record having general equity jurisdiction, alleging insolvency and praying for an order restraining the company from further carrying on its business of insurance, and praying for the appointment of Receivers.

(c) On November 9, 1921, the said Circuit Court No. 2 of Baltimore City, upon consideration of the said bill of Complaint and the other papers filed and after the Employers Mutual Insurance & Service Company had in open Court admitted insolvency, passed an order appointing the Plaintiffs herein Receivers of the said Employers Mutual Insurance & Service Company, with power and authority to take charge and possession of the real estate, goods, merchandise, moneys, books, papers and checks of or belonging to the said Employers Mutual Insurance & Service Company and to collect the outstanding debts due to the said corporation, including all assessments legally assessed

against its policyholders. The said order required the persons named to give bond in the penalty of $50,000.00 before they should proceed to act as receivers, and such bond has been duly given by the Plaintiffs herein and is now filed in the said Circuit Court No. 2 of Baltimore City, and said Receivers are in all respects fully qualified as such.

[fol. 7] (d) On June 6, 1924, the said Circuit Court No. 2 of Baltimore City, by order authorized and directed the said Receivers to bring any suit and take any further action which they thought necessary or desirable to secure the prompt collection of all unpaid assessments due to the said Employers Mutual Insurance & Service Company.

(e) On or about the 22nd day of October, 1920, the Employers Mutual Insurance & Service Company issued its written strike policy to the Defendant herein, whereby the Employers Mutual Insurance & Service Company agreed to indemnify the Defendant for one year against the loss sustained by Defendant and caused by a strike of all or part of Defendant's employees, subject to the terms and conditions set forth in said written policy; and in consideration thereof, the Defendant then paid to the Employers Mutual Insurance & Service Company a premium deposit of $633.60, and agreed to pay to the Employers Mutual Insurance & Service Company all such further sums as might from time to time be assessed on said policy by the Board of Directors of said Company, in conformity with the Articles of Incorporation and By-Laws of the Company and the laws of the State of Maryland, provided that such further sums should not in any case be more in any one policy year than an amount equal to the premium deposit of such policy year.

(f) The By-Laws of said Employers Mutual Insurance & Service Company attached to the policy so issued to De-[fol. 8] fendant herein, contained the following clause:

Article 6. Each member of this Company shall pay in addition to the cash premium written in his policy, all such sums as may be assessed by the Directors of this Company pursuant to the laws of the State of Maryland, but not in any event to exceed an additional amount equal to the

amount of the cash premium. And the Directors may, from time to time, whenever the Company in their discretion has sufficient surplus to warrant such action, declare a dividend out of such surplus to policyholders who have been members for three years or more.

(g) The laws of the State of Maryland with respect to mutual insurance companies include, among other provisions the following as contained in the Code of Public General Laws of the State of Maryland:

Article 23, Sec. 113. Except as otherwise provided, the policyholder shall be a member of the company while the policy is in force.

Sec. 114. The maximum premium, or premium deposit payable by any member shall be expressed in the policy or in the application for the insurance. Such maximum premium, or premium deposit, may be a cash premium and an additional contingent premium not less than the cash premium, or may be solely a cash premium with no contingent premium or liability to assessment in any event. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the capital stock and surplus [fol. 9] required of domestic stock companies transacting the same kinds of insurance.

Sec. 118. Such company not possessed of assets at least equal to the unearned premium reserve and other liabilities, shall make an assessment to provide for such deficiency upon only such members as are liable to assessment in proportion to their several liabilities expressed in their policies.

(h) The Employers Mutual Insurance & Service Company, in addition to issuing its policy to the Defendant herein, issued between May, 1920, and August, 1921, a large number of policies to persons and corporations engaged in the printing business.

(i) During the period from May, 1920, until May 27, 1921, many strikes arose in various parts of the country and many members and policyholders of said Employers Mutual Insurance & Service Company suffered loss by rea-

son of such strikes and became entitled to make and did make large claims for such losses against the said Employers Mutual Insurance & Service Company; particularly large claims for strike losses were made against the said Employers Mutual Insurance & Service Company by persons and corporations engaged in the printing business. Such strike losses covered by policies of insurance of the said Employers Mutual Insurance & Service Company, for which claims have been made are approximately Six Million Dollars, whereas the total assets, including this assessment, did not at the time of the assessment and have not since exceeded one-fourth of this amount.

[fol. 10] (j) The Defendant herein was a member of said Employers Mutual Insurance & Service Company and a policyholder therein, and his policy was in force at the time that the losses aforesaid were incurred and was in force on May 10th, 1921.

(k) Thereupon the Board of Directors of the said Employers Mutual Insurance & Service Company on May 31, 1921, at a meeting duly called, passed the following Resolution:

"Be it resolved that an assessment of 100% of the premium deposits is hereby levied on all members of the company on all policies in force May 10, 1921, said assessments payable as follows:

50%—June 20, 1921.
30%—July 20, 1921.
20%—August 20, 1921."

1. Thereafter the Board of Directors of the said Employers Mutual Insurance & Service Company on June 13, 1921, at a meeting duly called, passed a further resolution providing that the date of the first instalment of the 100% assessment be deferred until June 30, 1921, the dates of the other instalments of assessments to remain the same, so that the assessments became payable as follows:

June 30, 1921 —50%
July 20, 1921 —30%
August 20, 1921—20%

(m) Thereafter, the Board of Directors of the said Employers Mutual Insurance & Service Company on September 30, 1921, at a meeting duly called, passed the following Resolution:

[fol.11] "The assessment of 100% levied on all policies on May 31, 1921, effective as to all policies in force as of May 10, 1921, be and is hereby made to apply to all policies that had expired or been cancelled prior to May 10, 1921, the intent being to make said assessment cover all policies legally liable therefor."

(n) Due notice of such assessment was thereupon on or about June 30th, 1921, sent to the Defendant and the Defendant was then debited upon the books of the said Employers Mutual Insurance & Service Company in an amount equal to 100% of the deposit premium above set forth. Thereupon, on June 30, 1921, 50% of said assessment became due and payable by the Defendant to the said Employers Mutual Insurance & Service Company, and thereafter on July 20, 1921, 30% of said assessment became due and payable by the Defendant to the said Employers Company, and thereafter on August 20, 1921, the remaining balance of 20% of said assessment became due and payable by the Defendant to the said Employers Mutual Insurance & Service Company. Demand for the payment of the said assessment has been made upon the Defendant, but such demand has been disregarded and no part of such assessment has been paid, leaving a balance now due of $633.60, with interest.

(o) Because of their appointment as Receivers of said Employers Mutual Insurance & Service Company, these Plaintiffs are now entitled to collect said indebtedness and [fol. 12] have duly demanded the same, but no part thereof has been paid to them.

Wherefore, Plaintiffs demand judgment against defendant for $633.60, with interest at 6% from August 20th, 1921, with costs and disbursements herein.

Barrows & Metcalf, Attorneys for Plaintiffs, 1604 Pioneer Bldg., St. Paul, Minnesota.

ANSWER

Now comes Buckbee-Mears Company, defendant in the action above entitled, and for answer to the plaintiffs' complaint therein:

I

Deny each and every allegation, statement, matter and thing in said complaint contained and every part thereof, as therein stated or otherwise, and save such thereof as are hereinafter expressly admitted.

II

Admit and allege that the Employers Mutual Insurance and Service Company mentioned in said complaint was and is a foreign corporation, organized and existing under the laws of the State of Maryland and having its office and [fol. 13] place of business within the State of Maryland, and that on or about October 22, 1920, it issued to the defendant a policy wherein it agreed to indemnify the defendant for one year against loss sustained by defendant caused by a strike of all or part of defendant's employes, and that at Saint Paul, Minnesota, the defendant paid said company Six Hundred Thirty-three and 60/100 Dollars ($633.60) therefor. That said policy was so sold and delivered to the defendant by an agent of said company at Saint Paul within the State of Minnesota, and the contract whereby the same was issued was made and entered into between said company and this defendant within the State of Minnesota.

III

Further answering, the defendant alleges that said Employers Mutual Insurance and Service Company was never qualified, permitted or authorized to transact business within the State of Minnesota, and never appointed any resident agent within the State of Minnesota, as required by the statutes of the State of Minnesota, and never in any respect complied with other statutes of the State of Minnesota necessary to qualify to do business therein. And this defendant alleges that the said plaintiffs in this action, purporting to be Receivers of said corporation and to rep-

resent it as such, have not the right to appeal to the Courts of Minnesota to enforce the cause of action set out in said complaint.

[fol. 14] Wherefore, defendant demands that plaintiffs take nothing by this action and that it recover its costs and disbursements herein sustained.

Oppenheimer, Peterson, Dickson & Hodgson, Attorneys for Defendant, 1015 Merchants National Bank Bldg., Saint Paul, Minnesota.

REPLY

Plaintiffs, for their reply to the answer herein, reaffirm each and every averment, allegation, matter and thing in the complaint herein contained, and deny each averment and allegation of new matter contained in the answer of this defendant, except as may be herein admitted or qualified.

The plaintiffs admit that the Employers Mutual Insurance and Service Company has never received written license or authority from the State of Minnesota to do business therein, and admits that it has never appointed a resident agent within the State of Minnesota upon whom service of process might be made, but this plaintiff alleges that the contract of insurance referred to in the complaint herein was a contract made without the State of Minnesota and constituted and was a contract between citizens of different States, and was and is a valid contract of insurance; that this action is brought by the Receivers of [fol. 15] said Insurance Company as Officers of Circuit Court No. 2 of Baltimore City, Maryland, a court of record having general equity jurisdiction, and that on the 18th day of June, 1924, by order of the above named Court duly made and entered herein, permission was granted to the said Receivers of said Insurance Company to bring and maintain this action in this court.

Wherefore, Plaintiffs pray judgment as in their complaint demanded.

Barrows & Metcalf, Attorneys for Plaintiff, 1604 Pioneer Bldg., St. Paul, Minn.

STIPULATION OF FACTS

It is stipulated by and between the parties hereto as follows:

I

That all the allegations contained in the complaint herein are true.

II

That defendant is a corporation organized and operating under the laws of the State of Minnesota, engaged in the manufacturing business, with its principal place of business [fol. 16] and only factory situated in the City of Saint Paul, Ramsey County, Minnesota.

III

That the plaintiff, Employers Mutual Insurance and Service Company, is a foreign corporation, organized and existing under the laws of the State of Maryland, and that it has never complied with the laws of the State of Minnesota in respect to qualifying for the purpose of transacting business within the State of Minnesota, and has never appointed a resident agent within the state as required by the statutes of the state, and has not complied with the statutes of the State of Minnesota in respect to qualifying foreign corporations of the character of the plaintiff to do business within the state.

IV

That the contract of insurance herein was made and entered into in the following manner: A representative of the plaintiff came to the State of Minnesota, and at a public meeting held in said County and State, made certain representations and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the plaintiff, and at that time and place distributed blank forms of application for membership in and insurance in said plaintiff company, and that this defendant, receiving one of said blank forms, caused the same to be filled out and sent down the same with its [fol. 17] check covering the initial premium or assessment to the home office of the plaintiff company at Baltimore.

Thereupon, the policy or contract was written at the home office of the plaintiff company and mailed to the defendant in said county and state.

V

It is further stipulated that upon this stipulation and upon all the files herein, the case is submitted to the court without argument, but with permission to both sides to file briefs with the court within ten days from the date hereof.

Dated this 4th day of March, 1925.

Barrows & Metcalf, Attorneys for Plaintiffs. Oppenheimer, Peterson, Dickson & Hodgson, Attorneys for Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on for trial at a General Term of this court on the 6th day of March, 1925. Plaintiffs appeared by their attorneys, Barrows & Metcalf, and the defendant by its attorneys, Oppenheimer, Peterson, Dickson & Hodgson. Thereupon, the action was submitted [fol. 18] for decision upon a stipulation of facts between the parties, dated the 4th day of March, 1925.

Now, upon such stipulation, after due consideration, the Court finds as Facts:

1. All of the allegations contained in the complaint are true.

2. Defendant is and during the times named in the complaint has been a corporation organized and operating under the laws of the State of Minnesota, with its principal place of business in the City of St. Paul in said state; and the Employers Mutual Insurance and Service Company is and during the times named in the pleadings has been a foreign corporation organized and existing under the laws of the State of Maryland. Said insurance company has never complied with the laws of the State of Minnesota in respect to qualifying for the purpose of transacting business within this state and has never appointed a resi-

dent agent within the state and has not complied with the statutes of the State of Minnesota in respect to qualifying foreign corporations of the character of plaintiff to do business within the state.

3. The contract of insurance herein was made and entered into in the following manner: A representative of the plaintiff came to the State of Minnesota and at a public meeting held in said county and state made certain representations and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the plaintiff, and at that time and [fol. 19] place distributed blank forms of application for membership in and insurance in said plaintiff company, and that this defendant, receiving one of said blank forms, caused the same to be filled out and sent down the same, with its check covering the initial premium or assessment, to the home office of the plaintiff company at Baltimore. Thereupon, the policy or contract was written at the home office of the plaintiff company and mailed to the defendant in said county and state.

As Conclusions of Law, the Court finds that plaintiffs are entitled to judgment against the defendants in the sum of $633.60, together with interest thereon at the rate of six per cent per annum from the 20th day of August, 1921, and the plaintiffs' costs and disbursements herein.

Let judgment be entered accordingly.
Entry of Judgment stayed 30 days.
Dated April 9, 1925.

Charles Bechhoefer, District Judge.

MEMORANDUM

The plaintiffs as receivers of Employers Mutual Insurance and Service Company (herein referred to as "the insurance company") seek to recover the amount of an assessment heretofore levied by the Board of Directors of the insurance company against the defendant as a policyholder in said company.

[fol. 20] The case is submitted upon a stipulation by the parties to the effect (1) that all allegations of the complaint are true; (2) that the insurance company is a Maryland corporation which has never complied with the laws of Minnesota in respect to admission to do business in this state; (3) that the contract of insurance in controversy was made and entered into in the manner set forth in the third paragraph of the findings.

Defendant maintains that the stipulated facts compel the conclusion that in issuing its policy to the defendant the insurance company was doing business in this state and, since the insurance company had not been licensed to do business within this state and had not complied with those provisions of our statutes relating to their right to transact business here, this action cannot be maintained.

Defendant further contends that it is immaterial where the contract was made, and whether made within or without the state, the action cannot be maintained and that on the pleadings, judgment should be ordered for the defendant.

Plaintiffs answer these contentions by saying that the insurance company did not transact any business within this state and in no respect has violated any of the statutes in question; that the defendant by contract executed in the State of Maryland has obligated itself for the payment of the money demanded in this action and that the contract is valid.

The question presented was considered by the Supreme Court of the United States in Minnesota Commerical Men's [fol. 21] Association v. Benn, 261 U. S. 140. This case reviewed the ruling of our Supreme Court in Benn v. Minnesota Commercial Men's Association, 149 Minn. 497, in which the Court said that the defendant was doing business in Montana. It appeared that the defendant had never maintained any office except in Minneapolis, Minnesota, where its business was transacted, and that it never owned property or sought permission to do business in any other State. Applications for membership on printed forms were usually presented by mail and acted upon by the Board of Directors at the office in Minneapolis, and, if accepted, certificates were issued and mailed to the members.

Assessments and dues were paid at this office and notices in respect thereto were mailed to the members. New members were procured by advertisement and through the solicitation of old members. Although not essential applications frequently bore a member's recommendation, and no compensation was paid to soliciting members, except occasionally in the form of premiums or prizes, and no paid solicitors or agents were employed. The application in question was by a resident of Montana and recommended by a resident of that state and was mailed from Montana to the company's office at Minneapolis.

Upon this showing our Supreme Court held that the defendant was doing business in the State of Montana. Upon review it was held that the facts show that the agreement was a Minnesota contract there made and to be performed [fol. 22] and that the Montana court was without jurisdiction to act, for the reason that the defendant was not doing business in that state. In this connection, the Court said:

"We think it cannot be said that the Association was doing business in Montana merely because one or more members, without authority to obligate it, solicited new members. That is not enough to warrant the inference that the corporation has subjected itself to the local jurisdiction."

In the instant case it appeared that a representative of the insurance company came to Minnesota, attended a public meeting held in Ramsey County, made certain representations and presented certain propaganda with reference to the insurance sought to be written and distributed blank forms of application for membership. Thereafter, the defendant caused an application for membership to be filled out and sent the same with remittance for the initial premium to the home office of the insurance company at Baltimore. Thereupon, the policy was written at the home office and mailed to the defendant.

In the case cited, solicitation was by old members having no authority to obligate the company. It does not appear from the stipulated facts that the representative of the insurance company who came to Minnesota had authority to obligate the company, nor does it appear that the repre-

sentative had contracted or attempted to contract as in the interstate commerce cases. See Defender Auto Lock [fol. 23] Co. v. Schmelzel, 157 Minn. 285, and cases cited.

Upon the authority of Minnesota Commercial Men's Association v. Benn, supra, it is held that in issuing its policy to the defendant the insurance company was not doing business in this state and in consequence it was not obliged to comply with the statutory provisions of this state relating to the right of foreign insurance companies to do business here.

It can heardly be said, as intimated in a case cited by defendant's counsel, that the laws and public policy of the state may be such as to forbid the enforcement of a legal contract such as the one here in controversy, when such contract is made in a foreign state and requires performance in Minnesota. As said in Terral v. Burke Construction Co., 257 U. S. 529-533, the sovereign power of the state is "subject to the limitations of the supreme fundamental law."

Bechhoefer, J.

[fol. 24] STIPULATION RE SETTLED CASE

It is hereby stipulated that the foregoing proposed case, consisting of seventeen pages of typewritten matter, may be taken as conformable to the truth and as containing all the records, files, rulings, orders and other proceerings of such trial, and that the same may be settled and allowed as the settled case herein by the Honorable Charles Bechhoefer, without notice.

Dated this 11th day of April, 1925.

Barrows & Metcalf, Attorneys for Plaintiffs. Oppenheimer, Peterson, Dickson & Hodgson, Attorneys for Defendant.

ORDER SETTLING SETTLED CASE

Pursuant to the stipulation by the attorneys for the respective parties herein, I hereby certify that the foregoing case, consisting of seventeen pages of typewritten matter,

is conformable to the truth and contains all the records, files, rulings, orders and other proceedings of such trial, and I hereby settle and allow the same as the settled case herein.

Dated this 25th day of April, 1925.

Charles Beehhoefer, District Judge.

[fol. 25] NOTICE OF MOTION FOR NEW TRIAL

To James W. Bothwell, William J. Michel, C. Stanley Hurlbut, William E. Thomsen, and Arthur M. Siegk, receivers of Employers Mutual Insurance and Service Company, and to Messrs. Barrows & Metcalf, attorneys for plaintiffs, 1604 Pioneer Building, Saint Paul, Minnesota:

You will please take notice that the defendant above named will, on the 18th day of April, 1925, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, move said court for its order amending the Conclusions of Law herein as follows:

I

Amending Conclusions of Law so as to make the same read as follows:

"As Conclusions of Law, the court finds that defendant is entitled to judgment against plaintiffs:

1. That plaintiffs are not entitled to any relief, and that plaintiffs take nothing by this action.
2. That defendant have judgment against the plaintiffs for its costs and disbursements herein.

Let judgment be entered accordingly."

II

The grounds of the foregoing motion will be that the Conclusions of Law are not justified by the facts as stipulated [fol. 26] to by the parties, and not justified by the facts as found by the Court, and are contrary to law, and that the amended Conclusions of Law herein proposed are war-

ranted, justified and required by the facts as stipulated to by the parties and by the facts as found by the Court, and that defendant is entitled to have said amended Conclusions of Law as a matter of right and of law.

III

And you are further notified that at the time and place aforesaid, and after the argument of the foregoing motion to amend the Conclusions of Law, in the event that said motion is denied, the defendant will move the Court for an order vacating and setting aside the decision of the Findings of Fact and Conclusions of Law filed on April 9, 1925, and granting the defendant a new trial on the following grounds:

1. That the decision is not justified by the evidence and is contrary to law.

IV

Said motion will be based upon all the pleadings, files, records and settled case.

Dated this 11th day of April, 1925.

Oppenheimer, Peterson, Dickson & Hodgson, Attorneys for Defendant, 1015 Merchants National Bank Bldg., Saint Paul, Minnesota.

[fol. 27] Order Denying Motion for New Trial

The above entitled cause came regularly on and was heard before the undersigned, one of the judges of said court, on motions of defendant to amend the Conclusions of Law heretofore filed in said action, and, in the event of a denial thereof, for an order vacating and setting aside the decision and Findings of Fact and Conclusions of Law filed as aforesaid and granting defendant a new trial. Messrs. Barrows & Metcalf appeared as attorneys for plaintiffs and Messrs. Oppenheimer, Peterson, Dickson & Hodgson appeared as attorneys for defendant.

The Court having heard the arguments of counsel for the respective parties, and having duly considered the same, together with all the files and records herein, it is

Ordered that the said motions be and they are in all things hereby denied.

Charles Bechhoeffer, District Judge.

Dated April 25, 1925.

[fol. 28] NOTICE OF APPEAL

To Messrs. Barrows & Metcalf, attorneys for the above-named plaintiffs, and to Mr. N. C. Robinson, clerk of said district court:

Please take notice that the above named defendant appeals to the Supreme Court of the State of Minnesota, from the order of the said District Court entered herein, on the 25th day of April, A. D. 1925, denying defendant's motion for an order vacating and setting aside the decision and findings of fact and conclusions of law filed herein and granting defendant a new trial, and from the whole thereof.

Dated this 4th day of May, A. D. 1925.

Oppenheimer, Peterson, Dickson & Hodgson, Montreville J. Brown, Attorneys for Defendant.

Due service admitted.
Bond on appeal approved and filed.

[fol. 29] IN SUPREME COURT OF MINNESOTA

[Title omitted]

Syllabus

1. When it appears that a foreign insurance company had not complied with any of the requirements of the statutes of Minnesota applicable to companies writing insurance against risks arising in the state, its courts should not lend their aid to the enforcement

of a contract of insurance indemnifying a citizen of Minnesota against "strike losses" sustained therein, although the policy of insurance was issued in another state upon the written application of the insured made in this state and mailed to the home office of the insurance company.

2. Entering into a contract of insurance in the manner above described is not interstate commerce. The policy is a simple contract of indemnity and its interstate character does not give it immunity from state control.

Reversed

[File endorsement omitted.]

OPINION—Filed March 5, 1926, and note appended thereto

The plaintiffs are the receivers of an insolvent insurance company whose business it was to insure employers of labor against loss by reason of strikes on the part of their employees. The defendant is a Minnesota corporation operating a printing establishment in the city of St. Paul. After a trial by the court, judgment in plaintiff's favor was ordered, and defendant appealed from an order denying a new trial.

A representative of the insurance company came to St. Paul and, at a public meeting, made certain representations as to the desirability of the kind of insurance written by [fol. 30] the company and distributed its blank applications for membership and insurance. Defendant received one of the applications, filled it out and sent it, with a check for the first premium, to the home office of the company in Baltimore, where the policy was written and then sent to defendant by mail.

The policy provided that the insured should be liable for assessments if the premiums charged were not sufficient to pay loses. They proved to be insufficient, the company became insolvent receivers were appointed, the policyholders were assessed, and this action was brought to recover the amount of defendant's assessment.

The defense is that the company never complied with the insurance laws of this state.

The question to be decided is this: Can a foreign insurance company, or receivers appointed in liquidation proceedings, maintain an action against the insured in a court of this state to collect an assessment, when it appears that the company failed to comply with the provisions of the statute regulating the business of insurance?

The trial court answered the question in the affirmative, saying "upon the authority of Minn. Com'l Men's Assoc. v. Benn, 261 U. S. 140, it is held that in issuing its policy to the defendant, the insurance company was not doing business in this state and, in consequence, it was not obliged to comply with the statutory provisions of this state relating to the right of foreign insurance companies to do business here." Unless the Benn case controls the decision of the case at bar, the question above stated must be answered in the negative.

In Seamans v. Christian Bros. Mill Co., 66 Minn. 205, 68 N. W. 1065, the court had before it the identical question presented here. It was there held that an insurance company which had not complied with the statutory require- [fol. 31] ments so as to be authorized to do business in this state could not recover a premium on a contract insuring property in this state whether the contract was made within or without the state. In the course of the opinion it was said that the statutory provisions are police regulations intended to protect the people of this state against irresponsible insurance companies and to compel all insurance companies doing business in the state or taking risks on property therein to comply with our local laws; that, if the public policy of the state prohibits the making of a certain contract and the contract is made elsewhere, the state is not bound to enforce it by extending to it the comity which exists between states; that the laws and public policy of the state may destroy this comity, and especially so if the contract was to be performed within the state although it was made elsewhere.

Swing v. Red River Lbr. Co., 105 Minn. 336, 342, 117 N. W. 442, cites the Seamans case with approval.

The doctrine there announced prevails in Wisconsin. Rose v. Kimberly & Clark Co., 89 Wis. 545; Presbyterian Ministers Fund v. Thomas, 126 Wis. 281. In the Rose case the court remarked that the evil which the insurance stat-

utes seek to correct is not the writing of the policy within the state by an unlicensed company, but the writing of such a policy at all. The same doctrine prevails in Michigan. Swing v. Cameron, 145 Mich. 175; in Iowa, Seamans v. Zimmerman, 91 Ia. 363; and in Pennsylvania, Swing v. Munson, 191 Pa. 582. The basis upon which it rests is that the principle of judicial comity does not require a state court to lend its aid in the enforcement of contracts which interfere with and tend to frustrate the policy established by the legislature. Commonwealth Mut. Fire Ins. Co. v. Hayden, 60 Neb. 636.

These decisions must be read in conjunction with Allgeyer v. Louisiana, 165 U. S., 580, in which the court condemned [fol. 32] a state statute which subjected to a fine any person who did an act within the state intended to effect for himself or for another insurance on property in the state in a marine insurance company which had not complied with the laws of Louisiana. In the opinion of the court, it was said that it may be conceded that the right to contract in relation to persons or property within the jurisdiction of the state may be regulated and sometimes prohibited if the contract conflicts with the policy of the state as contained in the statutes. But the power cannot extend to prohibiting the citizens from making contracts outside the limits and jurisdiction of the state *which are also to be performed outside of such jurisdiction.* The words italicized are significant and indicate that the court intended to limit the application of the rule announced to cases in which a foreign insurance company does not engage to perform its part of the contract in the state where the insured resides and in which the property insured is situated.

The policy of the legislature is expressed in Sec. 3314, G. S. 1923, as follows:

"It shall be unlawful for any * * * corporation to solicit, or make, or aid in the soliciting, or making of any contract of insurance not authorized by the laws of this state. All contracts of insurance on property, lives or interests in this state, shall be deemed to be made in this state."

Sec. 3722, G. S. 1923, also throws light on the subject. It permits a citizen of this state to take insurance in an unlicensed company by giving a bond to the insurance com-

missioner for the payment of a tax on the premium charged for the insurance. When the bond is given, the commissioner issues a license good for one year and the insurance is declared to be valid.

Other statutory requirements need not be stated in detail. It is sufficient to say that they require, among other things, that a foreign insurance company must secure a license to do business in this state; deposit with the in- [fol. 33] surance commissioner a certified copy of its charter and by-laws and a statement showing its financial condition; file an instrument in the office of the commissioner appointing him, or his successor in office, its attorney in fact upon whom proofs of loss and process in any action or legal proceeding may be served; make a deposit of securities with the commissioner for the protection of Minnesota policyholders, or file a certificate by the insurance commissioner of the state of its organization that it has deposited with him securities in a required amount for the protection of all its policyholders. Secs. 3309, 3591, 3592, 3593, 3595, G. S. 1913, and Chapter 380, Laws 1921.

In the case at bar the risk insured against was one to be encountered in this state. It was incidental to the operation of defendant's printing establishment in St. Paul. If there were a loss, it would be sustained in this state. The policy is not in the record and we do not know where the loss, if one occurred, was to be adjusted or paid. If the contract was to be performed in Maryland, it may be true that the courts of this state could not refuse to enforce it and that such a refusal would contravene certain provisions of the Federal Constitution. Stone v. Old Colony St. Ry., 212 Mass. 459; N. Y. Life Ins. Co. v. Head, 234 U. S. 149. In the present case there is no showing that the contract was not to be performed in Minnesota, hence these cases are not controlling.

We come now to Minn. Com'l Men's Assoc. v. Benn, supra. In that case a Minnesota corporation issued an accident and health certificate to Robert J. Benn of Montana. Upon his death his widow brought an action in a Montana court to recover the sum due under the certificate of membership. Service of the summons and complaint was made upon the secretary of state and insurance commissioner of Montana.

The association did not appear or defend and judgment went against it by default. Thereafter Mrs. Benn brought an action in this state upon the Montana judgment. We [fol. 34] held that the Montana court had jurisdiction to enter the judgment, and the case was carried to the United States Supreme Court. The opinion of Mr. Justice McReynolds sets out the facts as follows: The only office maintained by the association was located in Minneapolis; its business was transacted there; it owned no property and had not secured permission to do business in any other state; it had printed forms of application for membership which, when filled out, were sent to the home office and submitted to the board of directors for approval: Benn's application was sent by mail from Kalispell, Montana, to Minneapolis, was approved, and his certificate of membership issued and mailed to him; assessments and dues were payable at the Minneapolis office; new members were procured by advertisement and through the solicitation of older members, who were urged to furnish lists of prospects and to use their influence to increase the membership, but no member had authority to bind the association; no paid solicitors or agents were employed; proofs of loss were sent to the home office and adjusted there by the directors and losses were settled by checks on Minneapolis banks mailed from the home office. Upon this state of facts the court concluded that the association was not doing business in Montana; had not subjected itself to the jurisdiction of the courts of that state and was not present within the state when service of the summons was made on the state officers mentioned, hence a personal judgment against the association based on such service was void for want of jurisdiction.

In the case at bar an entirely different situation is presented. The insurance company has not been sued. Through its receivers, it is the plaintiff in an action brought against a citizen of this state to enforce an obligation incurred upon a contract alleged to have been made in another state, the subject matter of which was the insurance of a Minnesota corporation against losses it might sustain in carrying on its business within the state.

[fol. 35] We conclude that Seamans v. Christian Bros. Mill Co., supra, should be followed and that we should give

effect to the public policy of the state as expressed in the statutes to which we have referred, until the Supreme Court of the United States disposes of the question differently.

It has been suggested that the transaction in question was one in interstate commerce and beyond the control of the state, but such is not the case. Issuing a policy of insurance is not a transaction of commerce. The policy is a simple contract of indemnity and its interstate character does not give it immunity from state control. See N. Y. Life Ins. Co. v. Cravens, 178 U. S. 389, where the earlier decisions so holding are collated.

The order denying a new trial is reversed.

Lees, C.

[fol. 36] [Title omitted]

Per Curiam—Filed March 19, 1926

After filing the foregoing opinion, our attention was called to St. Louis Compress Co. v. Arkansas, 260 U. S. 346, where a statute of the state of Arkansas somewhat similar to Sec. 3722, G. S. 1923, was held to be in conflict with the Fourteenth Amendment to the Federal Constitution. We referred to Sec. 3722 and to other statutory provisions as evidence of the legislative policy in dealing with foreign corporations writing insurance on risks in this state. The validity of the statute was not considered but to avoid the possibility of misunderstanding, we append this note to the opinion.

[File endorsement omitted.]

[fols. 37-43] In Supreme Court of Minnesota

Settled Case from District Court of Ramsey County

Summons, June 19, 1924, omitted in printing.

Complaint omitted; printed side page 5 ante.

[fols. 44 & 45] Answer omitted; printed side page 12 ante.

[fol. 46] Reply omitted; printed side page 14 ante.

[fol. 47] STATE OF MINNESOTA,
County of Ramsey:

DISTRICT COURT, SECOND JUDICIAL DISTRICT

JAMES W. BOTHWELL, WILLIAM J. MICHEL, C. STANLEY Hurlbut, William E. Thompson, Arthur M. Siegk, Receivers of Employers Mutual Insurance and Service Company, Plaintiffs,

vs.

BUCKBEE MEARS COMPANY, Defendant

STIPULATION OF FACTS

It is stipulated by and between the parties hereto as follows:

I

That all of the allegations contained in the complaint herein are true.

II

That defendant is a corporation, organized and operating under the laws of the State of Minnesota, engaged in the photo engraving business with its principal place of business and only factory situated in the City of Saint Paul, Ramsey County, Minnesota.

III

That the plaintiff, Employers Mutual Insurance and Service Company, is a foreign corporation organized and existing under the laws of the State of Maryland, and that it has never complied with the statutes of the State of Minnesota

in respect to qualifying for the purpose of transacting business, insurance or otherwise, within the State of Minnesota, and has never appointed a resident agent within the State as required by the Statutes of the State, and has not complied with the Statutes of the State of Minnesota in respect to qualifying foreign corporations of the character of the plaintiff to do business within the state.

[fol. 48] IV

That the contract of insurance issued by said Employers Mutual Insurance and Service Company to defendant and upon which this suit is brought was made and entered into in the following manner:

A representative of said insurance company came to the State of Minnesota and at a meeting of printers, lithographers and engravers arranged by said representative and held in the City of Saint Paul, in said County and State, made certain representations and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the said insurance company, and at that time and place furnished blank forms of application for membership and insurance in said insurance company, and that this defendant receiving one of said blank forms caused the same to be filled out and sent the same, with its check covering the initial premium or assessment, to the Home Office of said insurance Company at Baltimore. Thereupon the policy or contract was written at the Home Office of the said insurance company and mailed to the defendant in said County and State.

V

That as a result of the representations made and the propaganda presented by said representative of said plaintiff at the meeting aforesaid, several printers, lithographers and engravers, in addition to defendant, all citizens of said State of Minnesota with their places of business within said State, filled out blank forms of application for membership and insurance in plaintiff company furnished to them at said meeting by said representative, and mailed the same,

with checks covering the initial premiums or assessments, to the Home Office of plaintiff company at Baltimore, Maryland. That thereafter policies or contracts similar to the one issued to defendant were executed by plaintiff company at its said Home Office and mailed to said printers, lithog- [fol. 49] raphers and engravers at their places of business within said State of Minnesota.

VI

That the contract or policy of insurance issued to defendant by plaintiff as aforesaid is as set forth in Exhibit A hereto attached and made a part hereof.

VII

It is further stipulated that upon this stipulation, the pleadings, and all files herein, the case is submitted to the Court for its decision.

Dated this 21st day of October, 1926.

Barrows & Metcalf, Attorneys for Plaintiffs. Oppenheimer, Dickson, Hodgson, Brown & Donnelly, Attorneys for Defendant.

[fol. 50] EXHIBIT A

Employers Mutual Insurance & Service Co. of Maryland
(Hereinafter called the Company)

Employer—"The Scales Must Balance"—Employee

Justice—Equity

$88,000.00. No. 412.

In consideration of the statements set forth in the Declarations hereto attached, and hereby made a part hereof, and of the Premium Deposit specified therein (which deposit is subject to adjustment annually); and that the Assured, by accepting this Policy, does also bind himself, his heirs, executors, administrators and assigns to pay all such further sums as may from time to time be assessed on this

Policy by the Directors of said Company, in conformity with the Articles of Incorporation and By-Laws of this Company and the Laws of the State of Maryland; provided that the Assured shall not be liable in any case to pay more than an amount equal and in addition to the annual Premium Deposit for any Policy year, does hereby agree to indemnify the individual, firm or corporation named in Statement 1 of the Declarations (herein called the Assured), for the period of one year, beginning October 22, 1920, at twelve and one minute o'clock A. M., standard time at the location of the plant mentioned in Statement 4 of said Declarations subject to renewal as hereinafter set forth, for the actual loss sustained through a strike beginning at any time while this Policy is in force, and incurred during a period not exceeding Three Hundred working days next succeeding the beginning of such strike, at a rate not exceeding two hundred ninety-three and 33/100 ($293.33) dollars per diem, and not exceeding an aggregate total indemnity of Eighty-eight thousand and no/100 ($88,000.00) dollars during any Policy year.

Part 1. Against all direct loss of average daily net profits and fixed charges during the period of prevention of production or operation of the Assured's business, in whole or in part, at the plant of the Assured described in Statement 4 of said Declarations, caused by a strike of all or part of the employees of the Assured.

Part 2. To defend in the name of and on behalf of the Assured any suits or other legal proceedings brought against the Assured by striking employees to enforce a claim, whether groundless or not, for damages, or for any payment, arising out of or by reason of any strike covered by this Policy; and to pay all expenses incurred by this Company in defending such suits or proceedings; not including, however, any obligation to pay the amount of any judgment or decree in any such suits.

Subject to the following conditions:

A. A strike, within the meaning of this Policy, is a cessation of work by a part, or all of the employees of the Assured, as the result of concerted action by such employees; to enforce a demand for higher wages; to secure the redress

of a grievance, real or alleged; to utter a protest or to resist a demand or a rule made by the Assured; or due to or caused by directions or orders issued by any labor union, or organization of employees, whether of the Assured or otherwise.

B. If a strike occurs or is begun during the term of this Policy so as to cause either a total or a partial prevention of production, the Company shall be liable for the actual loss sustained not exceeding in either case the per diem indemnity nor the total indemnity herein stated.

C. If, during the continuance of a strike, covered by this Policy, the plant of the Assured or any part thereof shall be destroyed or damaged by incendiarism, explosives or violence, due directly to or caused by strikers or their sympathizers, so as to prevent production, in whole or in part, the Company shall be liable for the actual loss of average daily net profits and fixed charges so occasioned, subject to the limitations expressed in Condition B and elsewhere in this Policy, for a period not longer than that required by the Assured, with due diligence, to place the plant in operation.

D. The Company shall not be liable for loss caused by strikes of mechanics or employees engaged in or on new construction work.

E. If the Assured carries other insurance, against a loss covered by this Policy, the Assured shall not be entitled to recover from the Company a larger proportion of the entire loss than the proportion that the amount of this Policy bears to the total amount of the Assured's valid and collectible insurance against such loss.

F. Upon the occurrence of a strike, or any demands or threat made upon the Assured, by any person or persons representing any organization or union or body of or for the Assured's employees, the Assured shall give immediate notice in writing with fullest information obtainable at the time, to the Company at its Home Office. If thereafter any suit is brought against the Assured to enforce a claim as described in Part 2 of the Insuring Clause, the Assured shall immediately forward to the Company, at its Home Office, every summons or process as soon as the same shall

have been served upon the Assured. Whenever requested by the Company, the Assured shall aid in securing information, evidence, and the attendance of witnesses; in effecting settlements; and in prosecuting appeals. The Assured shall at all times render to the Company all co-operation and assistance within the Assured's power. The Assured shall not voluntarily assume any liability; nor interfere in any negotiations or legal proceedings conducted by the Company on account of any claim described in Part 2 of the Insuring Clause; nor, except at the Assured's own cost, settle any claim, nor incur any other expense without the written consent of the Company previously given.

G. This Policy may be cancelled at any time after the first policy year at the request of the Assured; or, without prejudice to the rights of the Assured as respects anything that may occur during the period this Policy is in force, by the Company, during any year, by giving fifteen (15) days' written notice of such cancellation; the effective date of such cancellation, to wit, the last of said 15 days, shall then be the end of the Policy period. If this Policy shall be cancelled as herein provided, or become void, or cease, the earned premium shall be computed and adjusted at short rate in accordance with the table hereon; except that if this Policy is cancelled by the Company, or by the Assured when actually retiring from the business herein described, the earned premium shall be adjusted pro rata; but iin no event shall the earned premium be less than one hundred ninety and 8/100 ($190.08) dollars.

H. This entire Policy shall be void if the Assured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the Assured be not truly stated herein; or in case of any fraud or false swearing by the Assured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

I. In the event of disagreement as to the amount of loss, the same shall be ascertained by two competent and disinterested appraisers, the Assured and the Company each selecting one, and the two so chosen shall first select a com-

petent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire. All losses for which this Company is liable, pursuant to this Policy, shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss having been received by the Company in accordance with the terms of this Policy; provided, however, that in the event of loss through strike, or property damage as defined herein, the Company shall, if requested by the Assured, make partial payments every thirty (30) days in an amount not exceeding fifty per cent (50%) of the approximate actual loss that has occurred.

J. No suit or action on this Policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the Assured with all the foregoing requirements, nor unless commenced within twelve months next after the determination of the loss.

K. In case of payment of loss under this Policy the Company shall be subrogated to the extent of such payment to all right of recovery by the Assured for such loss, and such right shall be assigned to the Company by the Assured on receiving such payment.

L. The Assured, as often as required, shall permit the Company to inspect its plant or property herein described, and submit to examinations under oath by any person named by the Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices and other vouchers or certified copies thereof if originals be lost, at such reasonable place as may be designated by the Company or its representative, and shall permit extracts and copies thereof to be made.

M. No person shall be deemed an agent of the Company unless such person is authorized in writing as such agent, by the President, Vice President, or one of the Secretaries of the Company.

N. The premium deposit specified at the head of the Declarations is subject to an adjustment at any time, after inspection by the Company of the Assured's plant herein described, in accordance with the Company's schedule rating system, such adjustment not to exceed an increase or reduction thereof of twenty (20%) per cent. Such adjustment shall be effective only as to the current Policy year, and shall not be retroactive except as to the first adjustment made during the first year this Policy is in force.

O. Wherever in this Policy the word "Assured" occurs, it shall be held to include the legal representative of the Assured; and wherever the words "Working Day" occur, they shall be held to cover a period of twenty-four (24) hours.

P. All indemnity provided herein shall be forfeited and all rights of said Assured under this contract shall be cancelled and annulled in case said Assured shall wilfully and wantonly cause or bring about a strike for fraudulent or illegal purposes; or for the fraudulent purpose of creating a liability against the Company in order to collect indemnity therefrom; or for unduly and fraudulently prolonging a strike.

Q. This Policy, and all the obligations herein contained, shall renew itself, from year to year, after the expiration of the first Policy year, unless the Assured or the Company shall give notice in writing fifteen (15) days before the expiration of the current Policy year of a desire not to renew the same.

R. No condition or provision of this Policy shall be waived or altered except by endorsement attached hereto signed by the President and the Secretary and countersigned by one of the Assistant Secretaries of the Company.

Rate $.72.

Premium Deposit, $633.60.

Declarations

Statement 1. Name of Assured: Buckbee Mears Company.

Statement 2. Address of Assured: Newton Bldg., St. Paul, Minn.

Statement 3. The Assured is (Individual, Copartnership or Corporation): Minnesota Corporation.

Statement 4. The description of the Assured's trade or business; the location of each factory, shop and yard where such trade or business is conducted; the estimated number of employees at each location; and the estimated fixed charges and net profits for the current policy year, are given in the following table:

Kind of trade or business	Estimated number of employees: Male	Female	Estimated (a) fixed charges, (b) net profits		Location of each factory, shop and yard
(1) Photo Engraving....	46	14	(a)	$96,000.00	
	Total.....		(b)	15,000.00	Newton Bldg., St. Paul, Minn.
(2)	.....		(a)		
	Total.....		(b)	.....	.....
(3)	.....		(a)		
	Total.....		(b)	.....	.....
.....	Total 60		Total	$111,000.00	.....

Statement 5. Amount of Insurance applied for, $88,000.00 being $293.33 per diem for three hundred working days.

Statement 6. The Assured commenced business September 1st, 1907.

Statement 7. The Assured carries no Use and Occupancy Insurance, except as follows (if any, state kind and amount): None.

Statement 8. During the last Ninety Days, there has been no action to organize the Employees of the Assured, nor has there been any demand or threat on the part of such employees, which might provoke a strike, except as follows: No.

Statement 9. The Assured has no open or closed shop agreements with Employees, except as follows: Closed shop. Engraving Department only.

Statement 10. The Assured observes the prevailing local wage scale and working hours, except as follows: Yes.

Statement 11. The Assured has had no strike of Employees, except as follows: No.

Statement 12. The Assured is a member of no Employers' or Manufacturers' Association, except as follows: Minnesota Photo Engravers Association, American Photo Engravers Assn.; Citizens Alliance.

In witness whereof the Company has caused this Policy to be signed by its President and its Secretary, but the Policy shall not be binding upon the Company until countersigned by one of the Assistant Secretaries of the Company.

Edward C. Myers, President. Emlen T. Littell, Secretary.

Countersigned by Morris G. Myers, Assistant Secretary.

Short Rate Table

Number of months.....	1	2	3	4	5	6	7	8	9	10	11	12
Percentage of Premiums earned	30	40	50	60	65	70	75	80	85	90	95	100

[fol. 51] By-Laws of Employers Mutual Insurance and Service Company

Article I

The business of this Company shall be managed and conducted by a Board of Directors, which Board shall consist of three (3) members until February 4th, 1919. After that date the Board shall consist of not more than twenty-one (21) members and not less than eleven (11) members, and a majority of the Directors elected shall constitute a quorum. The Directors shall hold office until their successors are elected and shall choose one of their number to be president, and one to be vice-president. The Board of Directors shall have power to appoint a secretary and as many officers, clerks and inspectors to carry on the business of the Company as they may deem necessary, and shall, from time to time, fix the salaries and allowances to be made to each and every person in the employment of the Company.

Article II

The annual election of the Board of Directors shall be held on the third Wednesday in January, 1919, and in each succeeding year, from 12 o'clock noon to 1 o'clock p. m. Each member shall be entitled to one vote either in person or by proxy, and each stockholder, in the event that any stock is hereafter authorized or issued, shall be entitled to one vote for each share of stock held by him, provided in each case that the policy of the member or the

stock of the stockholder shall have been dated or held by him at least thirty (30) days immediately preceding such meeting. In case of any failure to hold an annual meeting the board shall take immediate steps to hold a special election. Due notice of any election shall be given by advertisement in some newspaper published in Baltimore City at least two weeks prior to such election, and by notice to each director and to each stockholder, if any there be. At all meetings of the Company five (5) or more members present in person or by proxy shall constitute a quorum.

Article III

The Directors shall choose by ballot one of their number as president. They shall also choose a vice-president, a secretary, a treasurer, and such other officers as they shall deem necessary. They shall also fix upon the place for the Home Office of the Company and the compensation to be allowed the officers and agents of the Company, including such officers and agents as may be members of the Board of Directors. The Directors may make such regulations respecting the powers, privileges and duties of the several officers and agents as may be found expedient from time to time. The Directors may appoint from their own number an Executive Committee to which they may delegate such of their powers as they may think proper. The president or the Directors may exercise any right reserved to the Com pany in any Policy of cancelling the same.

Article IV

Except as may be provided in these By-Laws the several officers of the Company shall have all the powers and privileges and shall perform all the duties incident to their respective offices, subject to the regulations of the Directors, under Article III.

The Treasurer shall not have authority to dispose of any of the securities of the Company without being authorized thereto by a vote of the Directors or a Finance Committee appointed by them.

Article V

Subject to the discretion of the Directors, the proper officers of this Company may issue policies of insurance of

this Company on any risks which are the legitimate subject of Insurance and which they are allowed by law to assume.

Article VI

Each member of this Company shall pay in addition to the cash premium written in his Policy, all such sums as may be assessed by the Directors of this Company pursuant to the laws of the State of Maryland, but not in any event to exceed an additional amount equal to the amount of the cash premium. And the Directors may, from time to time, whenever the Company in their discretion has sufficient surplus to warrant such action, declare a dividend out of such surplus to policyholders who have been members for three (3) years or more; said dividend to be apportioned among members pro rata according to the amount of premiums paid by them during one year immediately prior to the declaration of such dividend.

Article VII

These By-Laws may be amended, repealed or altered, in whole or in part, at any meeting of the Company, provided that due notice of the time, place and purpose of such meeting shall have been given, as provided in Article II.

It is hereby understood and agreed that should a strike be in progress at the plant named herein at the time of the date named as the beginning of the within policy, the Company shall not be liable for any loss sustained as the result of such strike; or, if notice has been given within thirty days prior to said date by any Employees of the Assured of an intention to strike, and such notice has not been withdrawn, this policy shall not become effective until the Assured has certified to the Company that such strike has been settled, or such notice of strike withdrawn; in either case the date of certification to become the effective date of this policy.

Edward C. Myers, President. Emlen T. Littell, Secretary. Morris G. Myers, Asst. Secretary.

[Endorsed:] The total amount of liability of the Assured under this Policy is one time the annual premium deposit. Date: October 22, 1920. Amount, $88,-

000.00. No. 412. Employers Mutual Insurance & Service Co. Employer—"The Scales Must Balance"—Employe. Justice—Equity. Incorporated under the General Laws of Maryland as a Mutual Company. Home office: Baltimore, Maryland. Name of Assured: Buckbee Mears Company, Newton Building, St. Paul, Minn. Notice. The Assured is hereby notified that by virtue of this Policy, he is a member of the Employers Mutual Insurance and Service Company, and is entitled to vote either in person or by proxy at any and all meetings of the Company. The Annual Meetings are held at its Home Office on the third Wednesday in January in each year, at 12 o'clock M.

[fol. 52] [Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on for trial at a general term of this Court on the 21st day of October, 1926, plaintiffs appearing by their attorneys, Messrs. Barrows & Metcalf, and defendant by its attorneys, Messrs. Oppenheimer, Dickson, Hodgson, Brown & Donnelly. Thereupon the action was submitted for decision upon a stipulation of facts between the parties dated the 21st day of October, 1926.

Now, upon such stipulation, after due consideration the Court finds—

As Facts

I

That all of the allegations contained in the complaint herein are true.

II

That defendant is a corporation, organized and operating under the laws of the State of Minnesota, engaged in the photo engraving business, with its principal place of business and only factory situated in the City of Saint Paul, Ramsey County, Minnesota.

[fol. 53] III

That the plaintiff, Employers Mutual Insurance and Service Company, is a foreign corporation, organized and existing under the laws of the State of Maryland, and that it

has never complied with the statutes of the State of Minnesota in respect to qualifying for the purpose of transacting business, insurance or otherwise, within the State of Minnesota, and has never appointed a resident agent within the state as required by the statutes of the state, and has not complied with the statutes of the State of Minnesota in respect to qualifying foreign corporations of the character of the plaintiff to do business within the state.

IV

That the contract of insurance issued by said Employers Mutual Insurance and Service Company to defendant and upon which this suit is brought was made and entered into in the following manner:

A representative of said insurance company came to the State of Minnesota and at a meeting of printers, lithographers and engravers arranged by said reprsentative and held in the City of Saint Paul, in said county and state, made certain representations and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the said insurance company, and at that time and place furnished blank forms of application for membership and insurance in said insurance company, and that this defendant, receiving one of said blank forms, caused the same to be filled out, and sent the same, with its check covering the initial premium or assessment, to the home office of said insurance company at Baltimore. Thereupon the policy or contract was written at the home office of said insurance company and mailed to the defendant in said county and state.

[fol. 54]

V

That as a result of the representations made and the propaganda presented by said representative of said insurance company at the meeting aforesaid, several printers, lithographers and engravers in addition to defendant, all citizens of said State of Minnesota, with their places of business within said state, filled out blank forms of application for membership and insurance in said insurance company furnished to them at said meeting by said representa-

tive, and mailed the same with checks covering the initial premiums or assessments to the home office of said insurance company at Baltimore in the State of Maryland. That thereafter policies or contracts similar to the one issued to defendant were executed by said insurance company at its said home office and mailed to said printers, lithographers and engravers at their places of business within said State of Minnesota.

VI

That the contract or policy of insurance issued to defendant by said insurance company as aforesaid is as set forth in Exhibit A attached to said stipulation.

As Conclusions of Law

the Court finds that defendant is entitled to judgment against the plaintiffs:

1. That plaintiff is not entitled to any relief, and that plaintiff take nothing by this action.

2. That said action be dismissed and that defendant have and recover of plaintiffs its costs and disbursements herein.

Let judgment be entered accordingly.

Dated this 21st day of October, 1926.

Charles Beehhoefer, District Judge.

[fol. 55] [Title omitted]

JUDGMENT

The above entitled action came on for trial at a general term of the above named court, without a jury, on the 21st day of October, 1926, upon a stipulation of facts, Messrs. Barrows & Metcalf appearing as attorneys for and on behalf of plaintiffs, and Messrs. Oppenheimer, Dickson, Hodgson, Brown & Donnelly appearing as attorneys for and on behalf of defendant; and the court, having considered the facts stipulated as aforesaid, and having been fully advised in the premises, did make and file in writing

its findings of fact, conclusions of law and order for judgment.

Now, Therefore, pursuant to said findings and order for judgment, it is hereby adjudged and decreed:

1. That plaintiffs are not entitled to any relief, and that they take nothing by this action.

2. That the action be dismissed.

3. That defendant have and recover of plaintiffs the sum of Ten Dollars ($10.00) costs heretofore taxed.

Witness the Honorable Olin B. Lewis, Judge of said Court, at Saint Paul, Minnesota, this 28th day of October, 1926.

N. C. Robinson, Clerk, by G. A. Johnson, Deputy.

Form and contents of the above decree are hereby approved. Bechhoefer, District Judge.

[fol. 56] [Title omitted]

STIPULATION RE SETTLED CASE

It is stipulated that the hereunto attached proposed Settled Case may be certified and allowed as and for the Settled Case and Record herein.

Dated November 9th, 1926.

Oppenheimer, Peterson, Dickson & Hodgson, Attorneys for Plaintiffs, 1604 Pioneer Building, Saint Paul, Minnesota. Barrows & Metcalf, Attorneys for Defendant, Merchants Bank Building, Saint Paul, Minnesota.

[fol. 57] [Title omitted]

ORDER SETTLING SETTLED CASE

The foregoing and annexed nineteen (19) typewritten and printed sheets contain all of the pleadings, stipulations,

proceedings, and findings had in connection with the hearing and decisions of the within entitled case, and I hereby Certify and allow the same as and for the settled case herein.

Charles Bechhoefer, District Judge.

Dated November 1st, 1926.

[fol. 58] [Title omitted]

NOTICE OF APPEAL

To Messrs. Oppenheimer, Dickson, Hodgson, Brown & Donnelly, attorneys for plaintiff, Saint Paul, Minnesota, and N. C. Robinson, Clerk of the District Court, Ramsey County, Minnesota.

GENTLEMEN: You will please take notice that the above named defendant appeals to the Supreme Court of the State of Minnesota from that certain judgment entered and docketed in the above entitled cause on October 28th, 1926, and from the whole thereof.

Yours respectfully, Barrows & Metcalf, Attorneys for Defendant, 1604 Pioneer Building, Saint Paul, Minnesota.

Dated November 5th, 1926.

[fol. 59] IN SUPREME COURT OF MINNESOTA

25987

JAMES W. BOTHWELL et al., Plaintiff-Respondent,

vs.

BUCKBEE MEARS COMPANY, Defendant-Appellant

OPINION—Filed December 10, 1926

PER CURIAM:

The defendant appealed from a judgment entered on Oct. 28, 1926 in the District Court of Ramsey County pur-

suant to the order from which the appeal was made in Bothwell, et al. v. Buckbee Mears Company, 166 Minn. 285, 207 N. W. 724. The matter involved in this appeal was thoroughly considered in the former opinion. Upon the authority of that opinion the judgment from which this appeal was taken is affirmed.

Affirmed.

[File endorsement omitted.]

[fol. 60] IN SUPREME COURT OF MINNESOTA

[Title omitted]

JUDGMENT—Filed December 22, 1926

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit of the District Court within and for the County of Ramsey be and the same hereby is in all things affirmed.

Dated and signed December 22nd, A. D. 1926.

Grace F. Kaercher, Clerk of Supreme Court, Minnesota. (S. P. Court Seal.)

[File endorsement omitted.]

Clerk's certificate to foregoing paper omitted in printing.

[fol. 61] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. —. Minnesota Supreme Court. Term No. —. James W. Bothwell, William J. Michel et al., receivers of Employers Mutual Insurance and Service Company, petitioners, vs. Buckbee, Mears Company. Petition for writ of certiorari and exhibit thereto. Filed —— —, 1927. File No. —— —, ——.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1926

No. 854

JAMES W. BOTHWELL, WILLIAM J. MICHEL, et al., Receivers of Employers Mutual Insurance and Service Company, Petitioners,

vs.

BUCKBEE, MEARS COMPANY

ORDER ALLOWING CERTIORARI—Filed March 7, 1927

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office Supreme Court, U. S.
FILED
JAN 26 1927
WM. R. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. ~~854~~ 169

JAMES W. BOTHWELL, WILLIAM J. MICHEL, C. STANLEY HURLBUT, WILLIAM E. THOMSEN, ARTHUR M. SIEGK, Receivers of Employers Mutual Insurance and Service Company, Petitioners,

vs.

BUCKBEE, MEARS COMPANY.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

MORTON BARROWS,
GEORGE P. METCALF,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No.

JAMES W. BOTHWELL, WILLIAM J. MICHEL, C. STANLEY HURLBUT, WILLIAM E. THOMSEN, ARTHUR M. SIEGK, Receivers of Employers Mutual Insurance and Service Company, Petitioners,

vs.

BUCKBEE, MEARS COMPANY, a Corporation, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

To the Honorable the Supreme Court of the United States:

Your petitioners, the receivers of Employers Mutual Insurance and Service Company, respectfully pray for a writ of certiorari requiring the Supreme Court

of the State of Minnesota to certify to the Supreme Court of the United States for its review and determination the final judgment of the Supreme Court of the State of Minnesota in the case of James W. Bothwell, William J. Michel, C. Stanley Hurlbut, William E. Thomsen, Arthur M. Siegk, receivers of Employers Mutual Insurance and Service Company, plaintiffs-appellants, *vs.* Buckbee, Mears Company, a corporation, defendant-respondent, and to that end, and in accordance with the rules of the Supreme Court of the United States, the petitioners herewith present a certified copy of the transcript of record in said case, including all proceedings in the Supreme Court of the State of Minnesota, and submit the following statement of the matter involved and the general reasons relied on for the allowance of the writ, together with a brief in support of this petition.

Statement.

Your petitioners are the receivers of an insurance company, a corporation organized and existing under the laws of the State of Maryland for the specific purpose of giving its members conservative and reasonable insurance on a mutual plan, at the least possible cost, to printers, publishers, and others, against loss by reason of strikes occurring in the conduct of their business. The Employers Mutual Insurance and Service Company, hereinafter called the Company, is not and never has been licensed to do business in the State of Minnesota. Its only office is in Baltimore,

Md., and all its business is transacted from that office. The Company has not and never has had any property of any kind or character in the State of Minnesota, nor any agent or representative therein. Applications for membership are submitted by mail to the Company at Baltimore and are accepted or rejected by the Company at its office in Baltimore. Contracts of insurance issued by the Company are entered into, made, and executed in the State of Maryland. Advertising is the sole method relied on by the Company to procure new members, and losses are paid from the home office.

The application of the respondent for membership in the Company was procured in the following manner: A representative of the Company came to the State of Minnesota and at a meeting of printers, lithographers, and engravers, arranged by said representative and held in the city of Saint Paul, in said County and State, made certain representations and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the said Company and at that time and place furnished blanks and forms of application for membership and insurance in said Company, and this respondent, receiving one of said blank forms, caused the same to be filled out and sent the same by mail, with its check covering the initial premium or assessment, to the home office of said insurance company at Baltimore. Thereupon the policy or contract was written and executed at the home office of said Com-

pany and mailed to the respondent at Saint Paul, Minn.

Thereafter an assessment was duly made and levied at the office of the Company in Maryland against all the members of said Company, including this respondent, and this respondent refused to pay said assessment. Subsequently and following the appointment of receivers of said Company an action was begun in the State District Court of Ramsey County in Minnesota on June 19, 1924, against the respondent to recover the amount of this assessment. Upon due hearing a judgment (R., 39) was ordered by the district court in favor of the petitioners and against the respondent for the amount of the assessment. An appeal from said order was thereupon taken by the respondent to the Supreme Court of Minnesota (R., 41). On March 5, 1926, the Supreme Court of Minnesota reversed the order of the district court and remanded the case for further proceedings (166 Minn., 285; 207 N. W., 724).

Thereupon and upon a rehearing of the case in the district court judgment was ordered in favor of respondent and your petitioners appealed from the judgment entered pursuant to said order to the Supreme Court of Minnesota, with the result that said judgment was by said Supreme Court of Minnesota affirmed on December 10, 1926 (R., 41, 42). All of which more definitely and circumstantially appears from the record herein.

The statutes of the State of Minnesota applicable to foreign insurance companies provide, among other things, as follows:

> That before any foreign insurance company shall be admitted or authorized to transact business in the State it shall, among other things, procure a license from the Secretary of State, and shall appoint the Insurance Commissioner its attorney for the service of summons and process. General Statutes Minnesota, 1923, Sections 3711-3713.

It was the contention of the defendant that this action could not be maintained in the courts of the State of Minnesota because the making of the contract of insurance was in contravention of the laws of the State of Minnesota and was therefore not enforcible therein. This view was adopted by the Supreme Court of Minnesota and is, in general, the basis of its decision and judgment.

Practically the same issues upon a similar state of facts were presented in *Benn vs. Commercial Travelers Association*, 261 U. S., 140, which case came before this Court for review upon a writ of certiorari directed to the Supreme Court of Minnesota.

Your petitioners submit the following general reasons for the allowance of the writ for the review by this Court of the judgment of the Supreme Court of the State of Minnesota:

I.

It appears from the pleadings and the record that the petitioners claimed and claim rights, privileges, and immunities, and especially under Article IV and under the XIVth Amendment to the Constitution; that the decision of the Supreme Court of the State of Minnesota enforces a law of that State which abridges the privileges and immunities of citizens of the United States, deprives your petitioners of liberty and property without due process of law, and denies to your petitioners the equal protection of the law; that the judgment entered by the Supreme Court of the State of Minnesota is a final judgment rendered by the highest court of the State of Minnesota in which a decision could be had in this case, and that a writ of certiorari is the only means available for procuring the review of the Minnesota judgment.

BRIEF.

I.

Section 237 of the Judicial Code of this Court, as amended by the Act of February 13, 1925, declares that—

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has

been rendered or passed by the highest court of a state in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of the statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by any party under the Constitution or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph."

All the essential prerequisites to the granting of the writ are present in this case. The judgment was rendered by the highest court of the State of Minnesota and is in every respect a final judgment, not subject to further review in the State court.

The enforcement of said judgment so entered by the State of Minnesota in this action would result in taking the petitioners' property without due process of law, in violation of the XIVth Amendment to the Constitution of the United States.

The enforcement of this judgment so rendered by the Supreme Court of Minnesota would deprive these petitioners, citizens of the State of Maryland, of the protection and the rights guaranteed to them under Article IV, Section 2, of the Constitution of the United States.

The enforcement of said judgment would result in depriving these petitioners of the protection guaranteed to them by Article IV, Section 1, of the Constitution of the United States, and especially that part thereof which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Throughout the trial and appeal of said case it was the position and contention of the respondent that the Company, in issuing said policy of insurance, was doing business in the State of Minnesota, and that under the statutes of the State of Minnesota the courts of that State were not open to the Company or to these petitioners for the purpose of enforcing against the respondent any of the provisions of said contract.

The answer to the complaint interposed by the defendant alleged and set up that the plaintiff was never qualified, permitted, or authorized to transact business within the State of Minnesota, as required by the statutes of said State, and never, in any respect, complied with the statutory requirements necessary to qualify to do business therein, and that the plaintiff had not the right to appeal to the courts of Minnesota to enforce the cause of action set out in said complaint, all of which allegations were denied by the plaintiffs in

their reply thereto. It would therefore appear affirmatively that the petitioners especially set up and claimed a right, privilege, or immunity under the Constitution; that the question of the existence of the right, privilege, or immunity was fairly and fully explained to the State courts; that a decision in regard thereto was necessary and essential to the determination of the case, and that the question thus presented was actually decided by the Supreme Court of Minnesota, and, further, that the State court in its opinion admits the existence and materiality of said constitutional and Federal questions, and that such questions were properly raised.

This brings the case well within the rules laid down by the court in *Adams vs. Russell*, 229 U. S., 353; *Miedreich vs. Lauenstein*, 232 U. S., 236. It is therefore within the sound discretion of this Court to grant a writ of certiorari in this case.

II.

The Supreme Court of the State of Minnesota, in its decision in this case, has refused to follow the rule of this Court laid down in the Benn case, *supra*, alleging as a primary and principal distinction between this and the Benn case that in this case the insurance company has not been sued, or, in other words, that a different rule of law prevails according to whether the parties are plaintiffs or defendants.

The decision of the Minnesota Supreme Court in this case cannot be reconciled with the well-established principles clearly announced by this Court.

Benn vs. Commercial Travelers Association, 261 U. S., 140.

Allgeyer vs. Louisana, 165 U. S., 578.

Hunter vs. Mutual Reserve Life Insurance Co., 218 U. S., 573.

Provident Savings Society vs. Kentucky, 239 U. S., 103.

Green vs. C., B. & Q. Ry. Co., 205 U. S., 531.

Phil. & Reading Ry. Co. vs. McKibbin, 243 U. S., 264.

Peoples Tobacco Co. vs. American Tobacco Co., 246 U. S., 79.

Rosenberg Bros. & Co. vs. Curtis Bros. Co., 260 U. S., 516.

St. Louis Cotton Compress Co. vs. Arkansas, 260 U. S., 346.

III.

This Court has heretofore granted a writ for certiorari to review a judgment of the Supreme Court of Minnesota in a case substantially identical with the present case. *Benn vs. Commercial Travelers Association*, 261 U. S., 140.

It is well known that many insurance companies throughout the United States are transacting insurance business in a manner similar to that of the company

in this case. As the Minnesota Supreme Court has reached a result or determination in conflict with the decision of this and other courts on a question of utmost importance to this and other insurance companies similarly conducting their business, it is vital to the constitutional rights of your petitioners and is highly desirable on the part of other insurance companies similarly engaged in business that the questions involved be settled by the final adjudication of this Court.

Respectfully submitted,

MORTON BARROWS,
GEORGE P. METCALF,
Attorneys for Petitioners.

SAINT PAUL, MINNESOTA.

(4155)

FILE COPY

No. [redacted] 169

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

JAMES W. ROTHWELL, WILLIAM J. MICHEL, ET AL., RECEIVERS OF EMPLOYERS MUTUAL INSURANCE AND SERVICE COMPANY,

Petitioners,

vs.

BUCKBEE, MEARS COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF OF PETITIONERS.

MORTON BARROWS,
GEORGE P. METCALF,
Attorneys for Petitioners,
1604 Pioneer Building,
Saint Paul, Minnesota.

WALTER L. CLARK,
Baltimore, Maryland,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 854

JAMES W. BOTHWELL, WILLIAM J. MICHEL, C. STANLEY HURLBUT, WILLIAM E. THOMSEN, ARTHUR M. SIEGK, RECEIVERS OF EMPLOYERS MUTUAL INSURANCE AND SERVICE COMPANY,

Petitioners,

vs.

BUCKBEE, MEARS COMPANY,

Respondent.

BRIEF OF PETITIONERS.

The defendant in error invokes the familiar rule that a chancery receiver connot sue in a state other than the court appointing him.

No such question was raised at the trial of this case or upon the appeal to the Supreme Court of the state. Before commencing suit the receiver applied to the state court for permission to sue and this permission was granted. The order of the court granting permission to sue is found on the first page of the record in this court, and it

will be observed that at no time was any exception taken to the order or any attack made upon it. The state court at no time had an opportunity to pass on the question whether the receivership in question was of the character which entitled the receivers to maintain an action in the Courts of Minnesota. The record contains no evidence as to the statutes of Maryland under which the receiver was appointed nor was the order of the court of Maryland appointing the receiver offered in evidence. All this resulted from the fact that the case was tried on a stipulation of facts and the defendant at no time asserted that the plaintiffs were without authority to sue.

The Supreme Court of Minnesota has held that a foreign receiver may sue in the courts of Minnesota. In the case of Comstock v. Frederickson, 51 Minn. 350, the state court says:

> "Where there are no domestic creditors whose rights are to be protected the courts of the state will recognize a non-resident receiver and permit him to prosecute an action therein or move to set aside a judgment fraudulent as to creditors represented by him in virtue of the comity existing between the states".

It is submitted that in view of the failure of the defendants to raise any question as to the propriety of the plaintiffs maintaining this action in Minnesota, the order of the State Court authorizing the action, and the decision of the Supreme Court of Minnesota above referred to, it is now too late to assert the objection raised in the brief of defendant in error.

While the statutes of Maryland relating to the appointment of receivers are not contained in the record in this case and are not passed upon by the Supreme Court of

Minnesota, it seems to the plaintiff in error that the statute brings the case within the line of decision of this court following the case of Bernheimer v. Converse, 206 U. S. 516, 51 L. Ed. 1163, 27 S. C. R. 755.

Section 51 of Article 48A, Annotated Code of Maryland provides as follows:

> "Whenever the insurance commissioner shall have reason to believe that any insurance company is insolvent or fraudulently conducted or that its assets are not sufficient for carrying on the business of the same, or during any non-compliance with the provisions of this Article, it shall be his duty to make complaint thereof to the Judge of either of the Circuit Courts of Baltimore City * * * which Judge shall upon requisitions of the commissioner appoint a commission consisting of the insurance commissioner and two disinterested and competent persons whose duty it shall be to examine into the business of said company and report in writing the result of said examination to the Judge appointing them, who shall if in his judgment the charges of insolvency, fraud, neglect, or abuse as charged by the insurance commissioner are sustained by the said report, at once issue an injunction suspending the business of the company. The commissioner shall institute or cause to be instituted the necessary proceedings under the laws of this state to close the affairs of any insurance company of this state which shall appear upon examination to be insolvent or to be fraudulently conducted."

Section 92 of Article 23 provides:

> "Whenever any corporation of this state other than a railroad shall have been determined by legal proceedings to be insolvent or shall be proven to be insolvent by proof offered under any bill filed under the provisions of this section, it may be dissolved after a hearing according to the practice of the Courts in

equity in this state upon a bill for that purpose filed in a court of equity of the County or City in which its principal office is located."

Section 94 provides as follows:

"Whenever any corporation shall be dissolved by the decree of any courts of this state its property shall be vested in its receivers appointed, etc." * * *

It appears from the records in this case that prior to the receivership the assessment sued upon was levied by the company and subsequently these receivers were duly appointed by the Circuit Court of Baltimore City and brought this action to recover the assessment.

The assessment being part of the assets of the corporation it vested in the receiver with the other property of the corporation upon appointment of the receivers and the case seems to come within the principle of the Bernheimer case above cited.

MORTON BARROWS,
GEORGE P. METCALF,
Counsel for Plaintiffs in Error.

WALTER L. CLARK,
Baltimore, Maryland,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 854

JAMES W. BOTHWELL, WILLIAM J. MICHEL, C. STANLEY HURLBUT, WILLIAM E. THOMSEN, ARTHUR M. SIEGK, Receivers of Employers Mutual Insurance and Service Company,

Petitioners,

vs.

BUCKBEE, MEARS COMPANY,

Respondent.

BRIEF OF RESPONDENT.

The cause is before the court on writ of certiorari to the Supreme Court of Minnesota. The decisions of that court called in question are reported in 166 Minn. 285, 207 N. W. 724, and 211 N. W. 478. They are set out in full in the record. (R., f. 29, p. 18, and f. 59, p. 41.)

THE FACTS

The Employers Mutual Insurance and Service Company is an insurance company organized under the laws of

the State of Maryland. Until suspension of operations, it was engaged in the business of writing insurance known as "strike insurance." (R., f. 5, p. 3.)

Some time during October, 1920, a representative of the company came to Minnesota. A meeting of printers, lithographers and engravers was arranged by him. The meeting was held in the City of St. Paul and was addressed by the representative. He made certain representations, and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the Employers Mutual Insurance and Service Company, and at such meeting he furnished those present with blanks forms of application for membership and insurance in the company. An officer of Buckbee, Mears Company, hereinafter referred to as respondent, a Minnesota corporation, engaged in the photo engraving business with its principal place of business and only factory located at St. Paul, was present at the meeting, received one of the blank forms, caused the same to be filled out, and sent the same, with the check of his company in the amount of the initial premium deposit, to the home office of the company at Baltimore. Thereupon a policy or contract was written at the home office of the company and mailed to the Buckbee, Mears Company, addressed to its office in St. Paul. (R., f. 48, p. 26.)

As a result of the representations made and the propaganda presented by the aforesaid representative of the Employers Mutual Insurance and Service Company at the meeting aforesaid, several printers, lithographers and engravers, in addition to respondent, all citizens of the State of Minnesota, with their places of business within such state, filled out blank forms of application for membership and insurance in the company furnished to them at the meeting by such representative, and mailed the same with checks covering the initial premiums deposits to the home office of

the company at Baltimore, Maryland. Thereafter policies or contracts similar to the one issued to respondent were executed by the Employers Mutual Insurance and Service Company at its home office, and mailed to such printers, lithographers and engravers. (R., f. 48, p. 26.)

The insurance company in question had not at the time of the insurance of the policies and contracts mentioned, nor did it at any time thereafter, comply with the various statutes of Minnesota with respect to foreign insurance companies writing insurance on risks within the state. In other words, the insurance company was not at the time it issued the policy or contract of insurance to respondent, nor at the time it issued any of the policies or contracts of insurance referred to, qualified under the laws of Minnesota to transact an insurance business within the state. (R., f. 47, p. 25.)

The statutes referred to provide, among other things, that a foreign insurance company before transacting an insurance business in the state shall—

1. Secure a license or permit from the State Insurance Commissioner authorizing it to transact such business in the state.

2. Deposit with the Commissioner a certified copy of its charter or certificate of incorporation, or of its by-laws, and statement showing its financial condition and business, verified by its president and secretary or other proper officers.

3. Furnish the Commissioner with satisfactory evidence of its legal organization and authority to transact the proposed business, and that its capital, assets, deposits with the proper official in its own state, amount insured, number of risks, reserve and other securities, and guaranties for protection of policy

holders, creditors and the public, comply with those required of like domestic companies.

4. Execute and file an instrument in the office of the Commissioner, constituting and appointing the Commissioner and his successor in office its true and lawful attorney upon whom proofs of loss, any notice authorized or required by any contract with such company to be served upon it, summonses and all lawful process in any action or legal proceeding may be served.

5. Appoint as its agents in this state residents thereof.

6. Make a deposit of securities with the Insurance Commissioner for the protection of Minnesota policyholders or file with the Insurance Commissioner of the state of its organization that it has deposited with him securities in a sum equal to at least $100,000.00 for the protection of all of its policyholders, wherever situated.

7. Solicit insurance in this state only through licensed agents and licensed pursuant to application made by the company. 3318,

See Sections 3310, 3312, 3314, 3319, and 3711 to 3722, General Statutes of Minnesota 1923, and Chapter 380 Laws of Minnesota 1921.

The policy of insurance issued to respondent was issued on or about October 22, 1920. Under the terms thereof, the Employers Mutual Insurance and Service Company agreed to indemnify the respondent for one year against loss sustained by respondent, and caused by a strike of all or a part of respondent's employes, subject to the terms and conditions set forth in the policy; and in consideration thereof respondent paid to the company a premium deposit of $633.60, and agreed to pay to the company such further sums as might from time to time be assessed on the policy by the board of directors of the company in conformity with

the articles of incorporation and by-laws of the company, provided that such further sum should not in any case be more in any one policy year than an amount equal to the premium deposit of such policy year. (R., f. 7, p. 4.) During the period from May, 1920, until May, 1921, many strikes arose in various parts of the country, and many members and policyholders of the company suffered loss by reason thereof and became entitled to make and did make large claims for such losses against the company. Such losses covered by policies of insurance of the company for which claims were made approximated six million dollars, whereas the total assets did not exceed one-fourth of such amount. (R., f. 9, p. 5.)

At meetings of the board of directors of the company held during May and June, 1921, resolutions were passed, levying a 100% assessment on all policyholders. Notice of this assessment was thereafter and on or about June 30, 1921, given to respondent, and demand made that such assessment be paid. (R., f. 10, p. 6.)

On August 26, 1921, a bill of complaint was filed by the Insurance Commissioner of the State of Maryland against the company in Circuit Court No. 2 of Baltimore City, Maryland, alleging insolvency and praying for an order restraining the company from further carrying on its business of insurance, and praying for the appointment of receivers. (R., f. 6, p. 3.)

On November 9, 1921, the court upon consideration of the bill of complaint and other papers filed, and after the company had in open court admitted insolvency, made its order appointing petitioners receivers of the company, with power and authority to take possession of the property and assets of the company and to collect the outstanding debts due the company, including all assessments legally assessed against its policyholders. (R., f. 6, p. 3.) On June 6, 1924, the court, by order, authorized the receivers to bring suits

in an attempt to force the collection of all unpaid assessments due the company. (R., f. 7, p. 4.)

Pursuant to these orders of the Maryland Court, the receivers, petitioners herein, commenced this action to recover the assessment of $653.60 levied against respondent as aforesaid.

The action was commenced in the District Court of Minnesota, Second Judicial District, and was tried to the court upon the pleadings and a stipulation of facts. The trial court made findings and ordered judgment for petitioners. A motion was made for a new trial, and denied. Respondent took an appeal to the Supreme Court of Minnesota, and that court reversed the lower court and sent the case back for a new trial. Upon the second trial, the case was again submitted to the court upon the pleadings and a stipulation of facts, and the lower court, in harmony with the decision of the Supreme Court, made findings and ordered judgment for respondent. An appeal from this judgment was taken to the Supreme Court by petitioners, and the Supreme Court, adhering to its former decision, affirmed the judgment. Thereafter application was made to this court for a writ of certiorari to the Supreme Court of Minnesota to review its judgment. The application was granted, and the decisions of the Supreme Court of Minnesota are here for review.

The stipulation of facts on which the case was submitted to the trial court the second time commences at folio 47, page 25 of the Record; the policy of insurance in question attached to and made a part of the stipulation commences at folio 50, page 27 of the Record.

THE ISSUE

Have peitioners a right under the Constitution of the United States to prosecute their action against respondent in the courts of Minnesota?

ARGUMENT

I.

A CHANCERY RECEIVER HAS NO POWER AS OF RIGHT TO SUE IN THE COURTS OF A JURISDICTION FOREIGN TO THAT OF HIS APPOINTMENT.

The Supreme Court of Minnesota has refused petitioners access to the courts of Minnesota. This is the sum and substance of its decisions. The question upon final analysis, as we view the case, is whether such refusal violates the full faith and credit clause of the Constitution, Section 1 of Article IV. We thus limit the scope of the review, notwithstanding the contention of petitioners that such refusal not only violates Section 1 of Article IV, but deprives them of rights guaranteed by Section 2 of Article IV, and results in an abridgment of privileges possessed by them as citizens of the United States, in a taking of their property without due process of law, and in a denial to them of the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment. The privileges and immunities, due process and equal protection clauses of the Constitution have nothing to do with the case. This becomes apparent on a moment's reflection. Petitioners seek access to the Minnesota courts, not in their status as citizens of the United States and of the states of which they are citizens, but as receivers of the Employers Mutual Insurance and Service Company, a Maryland corporation, holding their appointment with power to sue those indebted to the company, by virtue of orders of Circuit Court No. 2 of Baltimore City, Maryland, made and entered in an action commenced and prosecuted in that court for an injunction restraining the company from further carrying on bus-

iness and for the appointment of receivers. The general ground for the relief sought was the insolvency of the company. Privileges and immunities as used in Section 2 of Article IV and Section 1 of the Fourteenth Amendment pertain exclusively to citizenship. Petitioners sue as receivers. Such privileges as are guaranteed to them as citizens, whether of the nation or a state, are in no way involved. As will be presently pointed out, they are ordinary chancery receivers; they constitute but an arm of the court appointing them. Due to this fact, the due process and equal protection provisions of Section 1 of the Fourteenth Amendment are not invocable in their behalf. The sole question, as we view the situation, and as heretofore stated, is whether the decisions of the Minnesota Supreme Court do violence to Section 1 of Article IV of the Constitution, which provides that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.

The status of petitioners is shown by the allegations of their complaint and reply.

We quote from the complaint as follows:

> "(a) The Employers Mutual Insurance and Service Company is a mutual insurance company, organized and existing under the laws of the State of Maryland, and was at the time the cause of action herein set forth arose, engaged in the business of writing insurance known as 'strike insurance.'
>
> "(b) On August 26, 1921, a bill of complaint was filed by Thomas J. Keating, Insurance Commissioner of the State of Maryland, against Employers Mutual Insurance and Service Company in the Circuit Court No. 2 of Baltimore City, Maryland, a court of record having general equity jurisdiction, alleging insolvency and praying for an order restraining the company from further carrying on its business of insurance, and praying for the appointment of Receivers.

"(c) On November 9, 1921, the said Circuit Court No. 2 of Baltimore City, upon consideration of the said bill of complaint and the other papers filed and after the Employers Mutual Insurance and Service Company had in open court admitted insolvency, passed an order appointing the Plaintiffs herein Receivers of the said Employers Mutual Insurance and Service Company, with power and authority to take charge and possession of the real estate, goods, merchandise, moneys, books, papers and checks of or belonging to the said Employers Mutual Insurance and Service Company and to collect the outstanding debts due to the said corporation, including all assessments legally assessed against its policyholders. *" (R., f. 5, p. 3.) We quote from the reply as follows:

" * * * that this action is brought by the Receivers of said Insurance Company as officers of Circuit Court No. 2 of Baltimore City, Maryland, a court of record having general equity jurisdiction, * * * * ." (R., f. 15, p.9.)

From these allegations it is clear that petitioners are ordinary chancery receivers. A chancery receiver has no legal status outside the territory or jurisdiction of the court appointing him. He receives his powers from the court, and can only exercise them within its jurisdiction. The court itself has no power beyond the bounds of its jurisdiction, and can confer none upon the receiver. And it is well settled that such a receiver has no power as of right to sue in the courts of a jurisdiction foreign to that of his appointment. He is considered merely as an officer of the court which appoints him. As said by Mr. Justice Van Devanter in Converse v. Hamilton, 224 U. S. 243, 32 Sup. Ct. 415, 56 L. Ed. 749, Ann. Cas. 1913D 1292:

"It is true that an ordinary chancery receiver is a mere arm of the court appointing him, is invested with no estate in the property committed to his charge, and

is clothed with no power to exercise his official duties in other jurisdictions." (224 U. S., p. 256).

Booth vs. Clark, 17 How. 322, 15 L. Ed. 164;
Hale v. Allinson, 188 U. S. 56, 47 L. Ed. 380, 23 Sup. Ct. 244;
Great Western Min. & Mfg. Co. v. Harris, 198 U. S. 561, 49 L. Ed. 1163, 25 Sup. Ct. 770;
Catlin v. Wilcox Silver Plate Co., 123 Ind. 477, 24 N. E. 250, 18 A. S. R. 338, 8 L. R. A. 62;
Hunt v. Columbian Ins. Co., 55 Me. 290, 92 Am. Dec. 592;
Robertson v. Staed, 135 Mo. 135, 36 S. W. 610, 58 A. S. R. 569, 33 L. R. A. 203;
Frink v. Nat'l Mutual Fire Ins. Co., 90 S. C. 544, 74 S. E. 33, Ann. Cas. 1913D 221;
Sercomb v. Catlin, 128 Ill. 556, 21 N. E. 606, 15 A. S. R. 147;
Wyman v. Eaton, 107 Ia. 214, 77 N. W. 865, 70 A. S. R. 193, 43 L. R. A. 695;
Castleman v. Templeman, 87 Md. 546, 40 Atl. 275, 67 A. S. R. 363, 41 L. R. A. 367;
Commercial National Bank v. Motherwell Iron, Etc. Co., 95 Tenn. 172, 31 S. W. 1002, 29 L. R. A. 164;
Dillingham v. Traders' Ins. Co., 120 Tenn. 302, 108 S. W. 1148, 16 L. R. A. (N. S.) 220;
Hardee v. Wilson, 129 Tenn. 511, 167 S. W. 475, Ann. Cas. 1916A 94;
Grogan v. Egbert, 44 W. Va. 75, 28 S. E. 714, 67 A. S. R. 763.

In the case of Hale v. Allinson, the court held that a receiver, appointed by a court of equity in the exercise of its general jurisdiction, could not, by virtue of his appointment and the direction to sue contained therein, maintain a suit in equity in a foreign jurisdiction to enforce the statutory liability of stockholders in an insolvent corporation. During the course of its opinion the court said:

"We are thus brought to the fact that this is a

plain and simple case of the appointment, authorized by statute, of a receiver by a court of equity in the exercise of its general jurisdiction as such court, with no title to the fund in him, and where such receiver acts simply as the arm of the court without any other right or title; and the question is whether, in these circumstances, a receiver can maintain this suit in equity in a foreign state by virtue of his appointment, and the direction to sue contained in the decree in the case in which he was appointed a receiver? We pursue the subject after the decision of Evans v. Nellis, 187 U. S. 271, ante, 173, 23 Sup. Ct. Rep. 74, only because of the argument made by counsel for appellant, that such a receiver as in this case is not prevented by the statute or decisions of Minnesota, from maintaining such an action as this, and that, if the statute do not prevent it, he may maintain an action of this nature notwithstanding the former decision, of this court in Booth v. Clark, 17 How. 322, 15 L. Ed. 164, which it is claimed, has been, if not overruled, at least shaken in principle by the decisions as to the comity which is said to prevail among the different states to permit such an action by a receiver outside the jurisdiction of the state of his appointment. We do not think anything has been said or decided in this court which destroys or limits the controlling authority of that case.

"It was there held that an ordinary receiver could not sue in a foreign jurisdiction, and an elaborate examination was made by Mr. Justice Wayne of the principles upon which the decision was founded. In speaking of the right of a receiver appointed under a creditors' bill in New York, to bring an action in a foreign state, it was said, in the course of the opinion, as to such a receiver, 'whether appointed as this receiver was, under the statute of New York, or under the rules and practice of chancery, as they may be, his official relations to the court are the same. A statute appointment neither enlarges nor diminishes the limitation upon his action. His responsibilities are unaltered. Under either kind of appointment, he has at most only

a passive capacity in the most important part of what it may be necessary for him to do, until it has been called by the direction of the court into ability to act. He has no extra-territorial power of official action; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court of another jurisdiction, as the judgment creditor himself might have done, where his debtor may be amenable to the tribunal which the creditor may seek.' This statement has not been overruled or explained away by any subsequent decision of this court to which our attention has been called." (188 U. S., p. 67).

In the case of Great Western Min. & Mfg. Co. v. Harris, the court held that the receiver of a corporation with no other title to its assets and property than that derived from his appointment in a suit brought to adjudicate and enforce liens, and subject the property to the payment of the claims of creditors, could not be empowered by the court of his appointment to sue in a foreign jurisdiction, either in his own name or in that of the corporation, to realize its assets. During the course of its opinion the court said:

"As to the power of the court to authorize the receiver to sue, we think the case is ruled by Booth v. Clark, 17 How. 338, 15 L. Ed. 170, in which case the authority of the court to authorize a receiver appointed in one jurisdiction to sue in a foreign jurisdiction was the subject of very full consideration. In that case it was held that a receiver is an officer of the court which appoints him, and, in the absence of some conveyance or statute vesting the property of the debtor in him, he cannot sue in the courts of a foreign jurisdiction upon the order of the court which appointed him, to recover the property of the debtor." (198 U. S., p. 574).

The court, in this case, gave consideration to the case of

Great Western Teleg. Co. v. Purdy, 162 U. S. 329, 40 L. Ed. 986, 16 Sup. Ct. Rep. 810, where the receiver of a defunct corporation appointed by a state court of Illinois brought suit in a state court of Iowa to recover an assessment upon stock, and in relation thereto, said:

> "It is urged that jurisdiction in this case is sustained by the case of Great Western Teleg. Co. v. Purdy, 162 U. S. 329, 40 L. Ed. 986, 16 Sup. Ct. Rep. 810, in which it was held that the assets and affairs of an insolvent corporation being in the hands of a receiver, the court might direct the calls or assessments upon delinquent shareholders who had not paid for their shares, thereby using the authority the directors might have exercised before the appointment of the receiver. In that case, a receiver appointed by the circuit court of Cook county, in Illinois, under the direction of that court brought an action in the name of the Great Western Telegraph Company, an Illinois corporation, by its receiver, against Purdy, a citizen of Iowa, to recover a sum alleged to be due from him upon an assessment upon his stock subscription, and it was held that the Illinois court might make the assessment and calls necessary to collect the stock which would be binding in another court. The jurisdiction of the Iowa court was not called in question in the state court of Iowa, where the original action was brought, nor was the question of jurisdiction raised in this court, or passed upon in deciding the case. While not detracting from the authority of that case as to the matter decided, we see nothing in it to indicate that, had the question herein presented been made, it would have been decided otherwise than here indicated." (198 U. S., p. 577).

It is clear from the authorities cited that the receivers in the case at bar have no right as a matter of constitutional law to sue in the courts of Minnesota. Whether the Supreme Court of our state should permit this action to be prosecuted because of the principle of comity between the states is a question exclusively for our Supreme Court to

decide. As just stated the right to maintain it is not founded on any provision of a federal nature. Our Supreme Court has declined to permit petitioners to prosecute their suit. This, it would seem, ends the case.

In the case of Finney v. Guy, 189 U. S. 335, 47 L. Ed. 839, 23 Sup. Ct. 558, the court said:

> "Whether, aside from the federal considerations just discussed, the Wisconsin court should have permitted this action to be maintained, because of the principle of comity between the states, is a question exclusively for the courts of that state to decide. The right to maintain it under the facts of this case is not founded upon any provision of a federal nature, and we cannot supervise the action of the Wisconsin court in this particular." (189 U. S., p. 345).

II.

ASSUMING FOR THE SAKE OF ARGUMENT THAT PETITIONERS ARE OF THE CLASS OF RECEIVERS INVOLVED IN CONVERSE V. HAMILTON, 224 U. S. 243, 56 L. Ed. 749, 32 Sup. Ct. 415, STILL THEY ARE WITHOUT CONSTITUTIONAL RIGHT TO MAINTAIN THE SUIT IN QUESTION IN THE MINNESOTA COURTS.

It is conceded that the Employers Mutual Insurance and Service Company was not at the time of the issuance of the policies in question qualified to do an insurance business within the State of Minnesota, it having failed to comply with the various provisions of the Minnesota statutes relative thereto. A state has the right to specify by statutory law what must be done by a foreign corporation before it may be permitted to do business within its borders; and when a foreign corporation fails to qualify itself to do business in a particular state, then it has no right founded

on any principle of constitutional law to prosecute actions in the courts of such state involving business transacted therein. Crutcher v. Kentucky, 141 U. S. 59, 35 L. Ed. 649, 11 Sup. Ct. 851; Doyle v. Continental Ins. Co., 94 U. S. 535, 24 L. Ed. 148; Ducat v. Chicago, 10 Wall. 410, 19 L. Ed. 972; Liverpool Ins. Co. v. Mass., 10 Wall. 573, 19 L. Ed. 1029; Am. Ins. Co. v. King Lbr. etc. Co., 250 U. S. 2, 63 L. Ed. 810, 39 Sup. Ct. 431; Interstate Amusement Co. v. Albert, 239 U. S. 560, 60 L. Ed. 439, 36 Sup. Ct. 168, and cases therein cited.

Had the Employers Mutual Insurance and Service Company itself instituted the action against respondents, the courts clearly could have refused to entertain the suit. The petitioners, assuming that they as receivers stand in the place of the Employers Mutual Insurance and Service Company, are in no different or better position than the company would be. They can do no more than their assignor; their assignor being without a right to sue, they are without such right. Barker v. Lamb, 99 Ia. 265, 68 N. W. 686, 34 L. R. A. 704; Swing v. Weston Lumber Co., 140 Mich. 344, 103 N. W. 816; Rose v. Kimberly, etc. Co., 89 Wis. 545, 62 N. W. 526, 46 Am. S. R. 855, 27 L. R. A. 556, 32 C. J. 998, and cases cited.

But petitioners argue that the Employers Mutual Insurance and Service Company was not doing an insurance business within Minnesota in issuing the policies in question; and that by reason thereof, petitioners are entitled to sue in the courts of this state. In support of their contention, they cite and rely on the case of Minn. Comm. Men's Assn. v. Benn, 261 U. S. 140, 67 L. Ed. 573, 43 Sup. Ct. 293. In the Benn case the only office maintained by the Association was located in Minneapolis; its business was transacted there; it owned no property and had not secured permission to do business in any other state; it had printed forms of application for membership

which, when filled out, were sent to the home office and submitted to the board of directors for approval; Benn's application was sent by letter from Kalispel, Montana to Minneapolis, was approved and a certificate of membership issued and mailed to him; assessments and dues were payable at the Minneapolis office; new members were procured by advertising through the solicitation of older members who were urged to furnish lists of prospects and to use their influence to increase the members, but no member had authority to bind the Association; no paid solicitors or agents were employed; proofs of loss were sent to the home office and adjusted there by the directors, and losses were settled by checks on Minneapolis banks mailed from the home office. From these facts the court held that the Association was not doing business in Montana; had not subjected itself to the jurisdiction of the courts of that state and was not present within the state when service of the summons was made on certain state officers, hence a personal judgment against the Association based on such service was void for want of jurisdiction. It is to be noted that the court did not have under consideration statutes such as those here involved—statutes requiring foreign insurance companies to meet certain requirements and to do certain things before transacting an insurance business in the state. The statute there under consideration was one providing that any corporation doing business in Montana "may be served with summons by delivering a copy of the same to the President, Secretary, Treasurer, or other officer of the corporation, or other agent designated by such corporation. * * * And if none of the persons abovenamed can be found in the State of Montana, and an affidavit stating that fact shall be filed in the office of the Clerk of Court in which such action is pending, then the Clerk of Court shall make an order authorizing the service of summons to be made upon the Secretary of State who

shall be and is hereby constituted an agent and attorney in fact to accept service on behalf of such corporation, and service upon said Secretary of State shall be deemed personal service upon said corporation." The question presented was whether the insurance company had transacted business in Montana within the meaning of the words "doing business" as used in this statute; and the court held that the company did not do business in Montana within the meaning of the words "doing business" as used in such statute merely because new members were solicited by old ones residing in the state, who had no authority to obligate the company through any contract.

It is our contention that the Employers' Mutual Insurance and Service Company, in entering into the contracts of insurance with the respondent and others, engaged in the transaction of an insurance business within the state. In the Benn case, the only fact upon which it could have been found that the insurance company was doing business within the state of Montana was that old members solicited new ones without authority to bind the company. The situation is entirely different in the case at bar. Here a representative of the Employers Mutual Insurance and Service Company came to the state, calling a meetings of printers, lithographers and engravers, and at such meeting solicited those present to take out insurance in the Employers Mutual Insurance and Service Company, and furnished them with blank forms of application for insurance in such company. As a result of his activities, policies were issued to respondent and others. We take the position that the activities of this representative constituted the transaction of an insurance business in Minnesota. The contracts issued by the company to respondent and others obligated the company to defend suits or other legal proceedings brought against their assureds by striking employees to enforce claims for damages or for payments arising out of or by

reason of strikes covered by the policies. It was clearly contemplated that the company, by and through its agents, would come into the state and defend such suits and legal proceedings. The contracts clearly contemplated also the adjustment of losses within the state necessitating the sending by the company of its agents into the state for the purpose of adjustment. The contracts also provided for the adjustment of losses by appraisement in case of disagreement, necessitating activities within the state on the part of the agents of the company. In addition to these things the contracts provided that the assureds should permit the company to inspect their plants and property and go over their books of account, bills, invoices and so forth. Obviously the plants could not be inspected and the books of account, bills, invoices and so forth examined, without the agents of the company coming into the state for such purposes. The contracts did not specify where losses were to be paid. In this situation, under the rule of the case of Penn Lumbermen's Mutual Life Insurance Company v. Meyer, 197 U. S. 407, 49 L. Ed. 810, 25 Sup. Ct. 483, the losses under these contracts were payable at the domiciles of the assureds all situated within the State of Minnesota. All of these things distinguish the case at bar from the Benn case; and to our minds are conclusive that the Employers Mutual Insurance and Service Company did actually transact an insurance business within the State of Minnesota.

See Penn Lumbermen's Mutual Fire Insurance Company v. Meyer, supra.

A determination of the question whether the company was doing business, under the facts and statute in the Benn case, is entirely different from a determination of the question whether the company in the case at bar, under the facts and statutes thereof, was doing business. In the Benn case the only statute under consideration was one providing the

method of securing jurisdiction over foreign insurance companies; and it was provided by this statute that where a foreign insurance company was doing business within the State of Montana, jurisdiction might be obtained by serving the summons in the manner provided. In the case at bar the question is whether the Employers Mutual Insurance and Service Company was doing business in the light of the various statutory provisions relative to the doing of an insurance business within the state by foreign insurance companies. These statutory provisions constitute an exercise of the police power of the State of Minnesota; they are police measures that were enacted and stand on the statute books for the purpose of protecting those in this state desiring insurance protection of one kind or another against spurious and irresponsible foreign insurance companies. It is plainly the intent of these provisions to compel all insurers taking risks in this state to comply with our local laws and submit to our local courts. In this case a representative came into this state and solicited the insurance in question. The company issued the policies as a result of such solicitation. The policies were issued to protect respondent and others against losses bound to occur, if ever to occur, in this state. We contend the issuance of these policies standing alone constituted the transaction of an insurance business within the meaning of these statutory provisions; and that by reason of the non-compliance therewith, the receivers of the company cannot resort to our courts to enforce the payment of the assessment in question. Aside from the question of doing business, it is the policy of the state to require foreign insurance companies to comply with these statutory provisions before taking risks within the state. Where risks are taken without such compliance, the company taking them is not in position to resort to the courts of the state. The doctrine of state com-

ity will not be applied to an action on a contract at variance with the policy of the state.

The Minnesota Supreme Court discussed this policy in the light of the Benn case and said:

> "The policy of the legislature is expressed in G. S. 1923, Sec. 3314, as follows:
>
> 'It shall be unlawful for any * * * corporation to solicit or make or aid in the soliciting or making of any contract of insurance not authorized by the laws of this state. All contracts of insurance on property, lives, or interests in this state, shall be deemed to be made in this state.'
>
> G. S. 1923, Sec. 3722, also throws light on the subject. It permits a citizen of this state to take insurance in an unlicensed company by giving a bond to the insurance commissioner for the payment of a tax on the premium charged for the insurance. When the bond is given, the commissioner issues a license good for one year and the insurance is declared to be valid.
>
> Other statutory requirements need not be stated in detail. It is sufficient to say that they require, among other things, that a foreign insurance company must secure a license to do business in this state; deposit with the insurance commissioner a certified copy of its charter and by-laws and a statement showing its financial condition; file an instrument in the office of the commissioner appointing him, or his successor in office, its attorney in fact upon whom proofs of loss and process in any action or legal proceeding may be served; make a deposit of securities with the commissioner for the protection of Minnesota policyholders, or file a certificate by the insurance commissioner of the state of its organization that it has deposited with him securities in a required amount for the protection of all its policyholders. G. S. 1913, Sections 3309, 3591, 3592, 3593, 3595, and L. 1921, P. 573, c. 380.
>
> In the case at bar the risk insured against was one to be encountered in this state. It was incidental to the operation of defendant's printing establishment

in St. Paul. If there were a loss, it would be sustained in this state. The policy is not in the record and we do not know where the loss, if one occurred, was to be adjusted or paid. If the contract was to be performed in Maryland, it may be true that the courts of this state could not refuse to enforce it and that such a refusal would contravene certain provisions of the Federal Constitution. Stone v. Old Colony St. Ry. Co., 212 Mass. 459, 99 N. E. 218; N. Y. Life Ins. Co. v. Head, 234 U. S. 149, 34 Sup. Ct. 879, 58 L. Ed. 1259. In the present case there is no showing that the contract was not to be performed in Minnesota, hence these cases are not controlling.

We come now to Minn. Com. Men's Assn. v. Benn, supra. In that case a Minnesota corporation issued an accident and health certificate to Robert J. Benn of Montana. Upon his death his widow brought an action in a Montana court to recover the sum due under the certificate of membership. Service of the summons and complaint was made upon the secretary of state and insurance commissioner of Montana. The association did not appear or defend and judgment went against it by default. Thereafter Mrs. Benn brought an action in this state upon the Montana judgment. We held that the Montana court had jurisdiction to enter the judgment, and the case was carried to the United States Supreme Court. The opinion of Mr. Justice McReynolds sets out the facts as follows:

The only office maintained by the association was located in Minneapolis; its business was transacted there; it owned no property and had not secured permission to do business in any other state; it had printed forms of application for membership which, when filled out, were sent to the home office and submitted to the board of directors for approval; Benn's application was sent by mail from Kalispell, Montana, to Minneapolis, was approved, and his certificate of membership issued and mailed to him; assessments and dues were payable at the Minneapolis office; new members were procured by advertisement and through

the solicitation of older members, who were urged to furnish lists of prospects and to use their influence to increase the membership, but no member had authority to bind the association; no paid solicitors or agents were employed; proofs of loss were sent to the home office and adjusted there by the directors and losses were settled by checks on Minneapolis banks mailed from the home office. Upon this state of facts the court concluded that the association was not doing business in Montana; had not subjected itself to the jurisdiction of the courts of that state and was not present within the state when service of the summons was made on the state officers mentioned, hence a personal judgment against the association based on such service was void for want of jurisdiction.

In the case at bar an entirely different situation is presented. The insurance company has not been sued. Through its receivers, it is the plaintiff in an action brought against a citizen of this state to enforce an obligation incurred upon a contract alleged to have been made in another state, the subject matter of which was the insurance of a Minnesota corporation against losses it might sustain in carrying on its business within the state.

We conclude that Seamans v. Christian Bros. Mill Co. supra, should be followed and that we should give effect to the public policy of the state as expressed in the statutes to which we have referred, until the Supreme Court of the United States disposes of the question differently."

The situation presented in this case has been before the courts of several jurisdictions and we shall proceed to review a few of these cases.

In the case of Seamans v. Christian Bros. Mill Co., 66 Minn. 205, 68 N. W. 1065, the Wisconsin Mutual Fire Insurance Company was a corporation organized under the laws of the State of Wisconsin to carry on a mutual fire insurance business. It became insolvent and plaintiff was ap-

pointed receiver for it by the courts of that state. Defendant, a corporation organized under the laws of Minnesota, and doing business therein, procured from this insurance company a policy of insurance on its property situated in Minneapolis. This suit was brought to recover a balance of unpaid premium claimed to be due on the policy. One of the defenses alleged by defendant and sustained by the lower court was that the insurance company had never complied in any respect with the statutes of the State of Minnesota. Judgment was ordered for defendant, and from the judgment entered, plaintiff took an appeal to the Supreme Court.

The Supreme Court held that as the insurance company had not complied with the statutory requirements so as to be authorized to do business in Minnesota, it could not recover premiums on a contract made by it insuring property within Minnesota; and the court held further that it was immaterial whether such contract was made within or without the state.

The court, in part, said:

> "The contract of insurance was made by correspondence between the two corporations. The trial court found as a fact that this contract was made in this state. Appellant assails this finding as not supported by the evidence, but, from the view we take of it, the point is not material; as we are of the opinion that even if the contract was made in Wisconsin, as contended by appellant, we would still refuse to enforce it, as being contrary to the policy of our laws, and an attempt to evade those laws. Among the statutory provisions material here are the following sections of G. S. 1894:
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> * * *
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> "These statutory provisions are policy regulations intended to protect people and property in this state against spurious and irresponsible insurance com-

panies. It is plainly the intent of these statutory provisions to compel all such insurers doing business in, or taking risks on property in, this state, to comply with our local laws and submit to our local courts. Neither can there be any doubt about the authority of the legislature to pass such laws. Paul v. Virginia, 8 Wall. 168; Hooper v. California, 155 U. S. 648, 15 Sup. Ct. 207. It is a general rule that a contract made in one state will be enforced in another state, though contrary to the laws or public policy of the latter state. 3 Am. & Eng. Enc. Law, 543. This rule is more especially applicable when no particular place of performance is contemplated by the contract, but the place of performance may be anywhere. It is also a general rule that where a contract is entered into in one state, to be performed in a certain other state, the validity of the contract will be determined by the law of the latter state. Id. 542, 544; Wharton, Confl. Laws, Sec. 398 et seq., 486. We will not attempt to discuss the many and complex distinctions that have arisen where these two rules came in conflict. Usually, in such a case of conflict of laws, it is little more than a question of determining the intention of the parties to the contract—whether they intended to be governed by the one law or the other. But cases arise where the parties are not thus at liberty to select which law they choose. See Wharton, Confl. Laws, Sec. 490-494.

"The laws or public policy of a state may prohibit the making of a certain contract, but it does not follow that if the contract is made elsewhere such state may not, within its borders, enforce the same by extending to it the comity which exists between states. But, again, the laws and public policy of the state may be such as to completely stamp out this comity, and prohibit within the jurisdiction of the state the enforcement of the contract. Especially is this so if, though the contract was made elsewhere, it was to be performed within the state. There are many cases extending this doctrine of comity to contracts of insurance made elsewhere, and insuring property in the

state in which the contract was enforced. See Wharton, Confl. Laws, Sec. 465-467. But, as before stated, it depends on the laws and public policy of such state whether or not it will thus enforce the contract. The laws and public policy may be such as to destroy this comity and prohibit such enforcement of the contract.

"We are of the opinion that the laws and public policy of this state in reference to the insuring of property are of this character. The restrictions in our statutes are so many, and the repressive character of the legislation such, that we must hold this to be the public policy of this state. This seems also to be the character of the insurance legislation in Iowa and Michigan, as appears by the cases of Seamans v. Zimmerman, 91 Iowa 363, 59 N. W. 290, and Seamans v. Temple Co., 105 Mich. 400, 63 N. W. 408, where this same receiver was defeated in attempts to collect unpaid premiums from citizens of those states. Neither does it make any difference that the insurer is a mutual company or that it is, as appellant claims, unincorporated. Neither is this decision in conflict with Ganser v. Fireman's Fund Ins. Co., 34 Minn. 372, 25 N. W. 943, where it was held that the insured can recover the loss even though the insurer has not complied with the statutory requirements so as to be authorized to do business in this state. The very object of these statutory provisions is the protection of the insured, and the parties are not in pari delicto. This disposes of the case, and renders it unnecessary to consider the other questions raised."

The rule of this case was recognized and applied by the court in the case of Langworthy v. Garding, 74 Minn. 325, 77 N. W. 207, where the court said:

"That plaintiff cannot recover in this proceeding unless the company he represents had complied with the requirements of the statute regulating the transaction of business in this state by foreign insurance companies is not questioned. Seamans v. Christian Bros. Mill Co., 66 Minn. 205, 68 N. W. 1065."

And also in the case of Swing v. Red River Lumber Co., 105 Minn. 336, 117 N. W. 442, where the court said:

> "The alleged statutory contingent liability was not authorized by the act under which the company was incorporated and organized, but by the amendment of 1888, which expressly provides that its provisions in this respect should not apply to mutual companies then doing business, unless they elected to reorganize as provided by the amendatory act. Swing v. Humbird, 94 Minn. 1, 101 N. W. 938. The same conclusion follows from the fact that the company was not authorized to do business in this state. Seamans v. Christian Bros. Mill Co., 66 Minn. 205, 68 N. W. 1065; Swing v. Weston, 140 Mich. 344, 103 N. W. 816."

See also:

Thomas Mfg. Co. v. Knapp, 111 Minn. 432, 112 N. W. 989;
State v. Beardsley, 88 Minn. 20, 92 N. W. 472;
M. K. & T. Trust Co. v. Krumsieg, 77 Fed. 32.

The courts of other jurisdictions have adopted the rule for which we contend.

In Presbyterian Ministers Fund v. Thomas, 126 Wis. 281, 105 N. W. 801, the court held, quoting from the syllabus:

> "Where a foreign insurance company has failed to comply with statutes imposing certain conditions and restrictions as conditions precedent to the right to make an insurance contract with a resident of the state, notwithstanding that the contract with the resident of the state is the contract of another state, the insurance company cannot recover thereon in the state."

In Rose v. Kimberly & Clark Co., 89 Wis. 545, 62 N. W. 526, the insurance contracts in questions were made outside of Wisconsin upon property within that state by a for-

eign company which had not complied with the laws of Wisconsin, and was thus debarred from doing business within that state. The suit was one brought by the receiver of the insurance company to recover an assessment made upon a policyholder. The lower court held the contract valid and ordered judgment for the plaintiff. This was reversed by the appellate court.

The court said:

"The object of this statute is so plain that it cannot be mistaken. It is to protect our citizens against irresponsible and worthless foreign companies of the very kind which we have now before us. The evil to be corrected is not the writing of a policy by an unlicensed company within this state alone, but the writing of such a policy at all. Bearing in mind the object of the statute and the evil to be corrected, it is very plain that the object will be largely defeated, and the evil will flourish as before, if it be held that companies without license can establish their agencies just outside of the state line and conduct their business by mail. Now, it will be observed that the legislature was not content with providing that no unlicensed company should make a contract of insurance within this state, but provided that no such company should, directly or indirectly, take risks or transact any business of insurance in this state. The writing of a policy of insurance upon property situated within this state would seem pretty clearly to be, in some degree at least, the transaction of insurance business in this state, whether the policy be written just within or just without the state line. It was said in Stanhilber v. Insurance Co., 76 Wis. 285, on page 291, 45 N. W. 221: 'A contract insuring property in this state necessarily involves the doing of business in this state, and hence is subject to the laws of this state.' We regard the remark as entirely correct, and fully as applicable to the present case as to the Stanhilber case. It is not meant

by this that the legislation in question has extra-territorial effect, or that it will invalidate a contract made in Illinois, but simply that when that contract is a contract insuring property within this state it is against the policy of our law, and will not be enforced by the courts of Wisconsin unless the conditions prescribed by our law have been complied with. In no other way can the manifest purpose and intent of the statute be reached; any different construction would render the law of little effect."

In Swing v. Cameron, 145 Mich. 175, 108 N. W. 506, the receiver of an insurance company which had not been authorized to do business in the state of Michigan brought suit on an insurance contract executed without the state of Michigan, protecting certain property situated within the state of Michigan from fire loss, to recover an assessment on the policy. The court held that the receiver was not entitled to maintain the action, due to non-compliance by the company with the statutes of Michigan.

In Seamans v. Zimmerman, 91 Ia. 363, 59 N. W. 290, the facts are set out in the opinion as follows:

"The plaintiff is the receiver of the Wisconsin Mutual Fire Insurance Company, which is a corporation organized under the laws of the state of Wisconsin, having its principal place of business in Milwaukee. It never had any office or agency in this state for the transaction of any business whatever. On the 20th day of June, 1890, the defendant made two written applications to the company at Milwaukee for insurance on certain property located at Guttenberg, in this state, where the defendant resided. The company accepted the applications in Milwaukee on the day specified, and issued to the defendant two policies of insurance, which were accepted by him in Milwaukee. The policies stipulated that the defendant became a member of the company, and liable to pay to it certain premiums and assessments. Losses were sustained by policyholders, and assessments were made on the defend-

ant in accordance with the terms of the policies, which are unpaid. The petition alleges that the policies are Wisconsin contracts, to be construed and enforced according to the laws of that state. The division of the answer involved in this appeal alleges that the company has had no authority or right at any time to do business, directly or indirectly, in this state, for the reason that it has failed and neglected to comply with the law relating to insurance companies contained in chapter 4, tit. 9, of the Code. The demurrer was directed to that division of the answer, and alleges that the facts therein stated do not constitute any defense to the cause of action set out in the petition, as the petition shows that the company is a Wisconsin corporation, and the contracts sued on were made in that state. The effect of the ruling on the demurrer was to hold that the facts alleged in the answer constitute a defense to the claim made by the plaintiff."

And the court, passing on the issue presented, said:

"The prohibition of section 1144 is directed not merely to the agents as such, but to the companies themselves. They are forbidden to take any risks in this state, either directly or indirectly. The general assembly intended the prohibition to reach as far as its jurisdiction extends. The power of the legislature of a state to make contracts like those under consideration void is not questioned. It was recognized in Insurance Co. v. Kinyon, supra. Comity does not require the enforcement of a contract valid where made but in violation of the law of the state where it is sought to be enforced. The provision of the statute under consideration was designed to protect the property owners of this state from irresponsible insurance companies, and the contracts in question belong to the class which the general assembly intended to prohibit. To hold that the company may recover the assessments would be an evident violation of the spirit and intention of the statute. The contracts are contrary to the policy of this state as expressed in the statute, and the courts of this state will not aid the company to enforce

them. Our conclusion finds support in the following authorities: Assurance Co. v. Rosenthal, 55 Ill. 86; Insurance Co. v. Stoy, 41 Mich. 401, 1 N. W. 877; Insurance Co. v. Harvey, 11 Wis. 394. The certificate of the trial judge does not show where the policies make the assessments in question payable, but we have, for the purposes of this appeal, assumed that the policies are Wisconsin contracts, designed to be performed there. What rights, if any, the policyholders might have under such policies, we do not find it necessary to determine. See, however, Pennypacker v. Insurance Co., 80 Iowa 57, 45 N. W. 408. We conclude that the district court rightly held that the facts set out in the division of the answer assailed by demurrer constitute a defense to the action. The order overruling the demurer is affirmed."

See also:

Swing v. Munson, 191 Pa. 582, 58 L. R. A. 223;
Seamans v. Temple & Co., 105 Mich. 400, 63 N. W. 409.

CONCLUSION

The Supreme Court of Minnesota, in refusing petitioners access to the Courts of Minnesota, did not deprive them of any right or privilege guaranteed by the Federal Constitution. They are without such right or privilege under the facts of the case. They are ordinary chancery receivers. Their power to sue does not extend to the Courts of Minnesota because beyond the jurisdiction of the Court appointing them. Viewed as quasi assignees of the defunct Employers Mutual Insurance and Service Company, they are without right to sue in the Courts of Minnesota on the contract in question, because of a failure on the part of the Company to comply with the laws of Minnesota before entering into such contract. The right of petitioners to sue in the Courts of Minnesota rests on comity and not on any provision of the Federal Constitution. The Minnesota Supreme Court having denied petitioners access to the Minnesota Courts as a matter of comity, petitioners are not in position to complain. They have no right as a matter of constitutional law to resort to such Courts.

It is respectfully submitted that the decision of the Minnesota Supreme Court should be affirmed.

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APPENDIX.

MINNESOTA STATUTES REFERRED TO IN BRIEF.

General Statutes of Minnesota, 1923:

"Section 3310. He (referring to commissioner of insurance) shall receive and hold in official trust deposits made by any domestic company in compliance with the laws of any other state, to enable it to do business in such state, and in like manner hold deposits made by a foreign company under any law of this state. * * *"

"Section 3311. The state department of banking and the state department of insurance shall use, for the safe keeping of securities except such securities as may for the convenience of the department of banking be kept in places designated by the superintendent of banks, such space in the safety deposit vault in the office of the state treasurer as may be agreed upon and assigned to such departments respectively, by the state treasurer."

"Section 3312. In this chapter, unless the context otherwise requires, 'company' or 'insurance company' shall include every corporation or association engaged in insurance as principal. 'Domestic' shall designate those incorporated in this state, and 'foreign' when used without limitations, those in any other state or country. * * *"

"Section 3313. Every company, domestic or foreign, shall file with the commissioner its acceptance of the provisions hereof, and by such changes, if any, as may be necessary, conform its charter or certificate of incorporation thereto, so far as same relate to such a company; and it and every company hereafter organized shall obtain from the commissioner his certificate that such charter or certificate of incorporation, and all proceedings thereunder, comply with law, which he shall indorse thereon when

approved, and thereupon each shall be governed by such provisions and those relative to corporations in general, so far as applicable and not otherwise specially provided."

"Section 3314. Insurance is any agreement whereby one party, for a consideration, undertakes to indemnify another to a specified amount against loss or damage from specified causes, or to do some act of value to the assured in case of such loss or damage. It shall be unlawful for any person, firm or corporation to solicit or make or aid in the soliciting or making of any contract of insurance not authorized by the laws of this state. All contracts of insurance on property, lives, or interests in this state, shall be deemed to be made in this state."

"Section 3318. * * * No insurance company or association nor fraternal beneficiary association, not specifically exempted therefrom by law, shall transact the business of insurance in this state unless it hold a license therefor from the commissioner of insurance."

"Section 3319. No company in this state other than fire, marine or fire and marine, hail, farmers' mutual or real estate title insurance companies shall do business in this state unless it has on deposit with the insurance commissioner of this state as security for all its policyholders, stocks or bonds, of this state, or of the United States or bonds of any of the municipalities of this state, or personal obligations secured by first mortgage on real estate within this state, worth, exclusive of buildings, the amount of the lien, and bearing interest of not less than three per cent per annum, to an amount, the actual market value of which, exclusive of interest, shall never be less than one hundred thousand dollars, except in case of companies organized to insure bicycles against loss from theft, the amount of such deposits for such companies shall never be less than ten thousand dollars ($10,000), which stocks,

bonds or mortgages shall be retained by the insurance commissioner and be disposed of as directed by law.

Provided, however, that the deposit of mortgages on real estate shall not exceed the amount of fifty thousand dollars. As long as any policies of the depositing company remain in force, the insurance commissioner shall hold the said deposit as security for all holders of its policies. Provided, any insurance company of any other state of the United States may file with the insurance commissioner of this state a certificate of the insurance commissioner of such other state, that, as such officer, he holds in trust and on deposit for the benefit of all the policyholders of such company a deposit of not less than one hundred thousand dollars par value of such securities as are required or permitted to be deposited with him by the laws of such state, such securities to be of the character in which insurance companies are authorized to invest under the laws of this state, stating the items of the securities so held, and that he is satisfied that such securities are worth one hundred thousand dollars. No deposit shall be required in this state while the said deposit, so certified, remains."

"Section 3711. Any insurance company of another state, upon compliance with all laws governing such corporations in general, and with the foregoing provisions so far as applicable, and also with the following requirements, shall be admitted to do business in this state:

1. It shall deposit with the commissioner a certified copy of its charter or certificate of incorporation, and of its by-laws, and a statement showing its financial condition and business, verified by its president and secretary or other proper officers.

2. It shall furnish the commissioner satisfactory evidence of its legal organization and authority to transact the proposed business and that its capital, assets, deposits with the proper official of its own state, amount insured,

number of risks, reserve and other securities, and guaranties for protection of policyholders, creditors and the public, comply with those required of like domestic companies.

3. By a duly executed instrument filed in the office of the commissioner, it shall appoint him and his successors in office its lawful attorneys in fact, and therein irrevocably agree that legal process in any action or proceeding against it may be served upon them with the same force and effect as it personally served upon it, so long as any of its liability exists in this state.

4. It shall appoint, as its agents in this state, residents thereof, and obtain from the commissioner a license to transact business therein."

"Section 3713. That before any corporation, association or company, issuing policies of insurance of any character, and not organized or existing pursuant to the laws of this state, is admitted to or authorized to transact the business of insurance in this state, it shall, by a duly executed instrument, to be filed in the office of the insurance commissioner, constitute and appoint the insurance commissioner and his successor in office its true and lawful attorney, upon whom proofs of loss, any notice authorized or required by any contract with such company to be served on it, summonses and all lawful processes in any action or legal proceeding against it may be served, and that the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state.

Said instrument shall contain a provision and agreement declaring that such company, association or corporation desires to transact the business of insurance in this state, and that it will accept a license therefor according to the laws of this state, and that it will not remove, or make application for removal, into any court of the United States

any action or proceeding commenced in any court of this state upon a claim or cause of action arising out of any business or transaction done therein.

In case of the failure of any such insurance company to comply with any of the provisions of this act, or if it shall violate any of the conditions or agreements contained in the instrument filed as aforesaid, its right to transact the insurance business in this state shall cease, and it shall be the duty of the insurance commissioner to immediately declare its license revoked; and in case of such revocation, said company shall not be again licensed to transact business in this state for the period of one year from date of such revocation."

"Section 3722. Whenever any person, firm or corporation desires to obtain insurance upon any property in this state in companies not authorized to do business therein, he or they shall give bond to the commissioner in such sum as he shall deem reasonable, with satisfactory resident sureties, conditioned that the obligors, on the expiration of a license to obtain such insurance, shall pay to the commissioner, for the use of the state, a tax of two per cent upon the gross premiums paid by such licensee. Thereupon the commissioner shall issue such license, good for one year, and all insurance procured thereunder shall be lawful and valid, and the provisions of all policies thereof shall be deemed in accordance, and construed as if identical in effect, with the standard policy prescribed in this chapter, and the insurers may enter the state to perform any act necessary or proper in the conduct of such business. Such bond may be enforced by the commissioner in his own name in any district court. The licensee shall file with the commissioner, on June 30 and December 31 annually, a verified statement of the aggregate premiums paid and returned premiums received on account of such insurance."

Laws of Minnesota 1921, Chapter 380,

"Section 1. * * * No person shall act or assume to act as an insurance agent or solicitor in the solicitation or procurement of applications for insurance, nor in the sale of insurance or policies of insurance, * * * until such person shall have obtained from the commissioner of insurance a license therefor, which license shall specifically set forth the name of the person so authorized to act as agent or solicitor and the class or classes of insurance for which he is authorized to solicit or countersign policies."

"Section 2. A license to any person to act as insurance agent for any insurer shall only be granted by the commissioner of insurance upon the written requisition of such insurer upon forms prescribed by the commissioner of insurance and the payment of a fee of two dollars ($2.00), in the case of a foreign insurer, and fifty cents in the case of a domestic insurer, and the filing of the application hereinafter provided for. Such license shall be issued for the term ending on the first day of March thereafter."

SUPREME COURT OF THE UNITED STATES.

No. 169.—October Term, 1927.

James W. Bothwell et al., Petitioners, *vs.* Buckbee, Mears Co. } On Certiorari to the Supreme Court of Minnesota.

[December 5, 1927.]

Mr. Justice Brandeis delivered the opinion of the Court.

This action was brought in a court of Minnesota. The plaintiffs below, petitioners here, are the receivers of the Employers' Mutual Insurance and Service Company, a Maryland corporation. The defendant, Buckbee, Mears Co., a Minnesota corporation, is a printing concern with its plant and only place of business in that State. The action is brought for the amount of an assessment made upon the insured pursuant to a policy for "strike insurance" issued by the Company. The only defense relied upon below, or open here, is that the Company (and hence its receivers) cannot maintain a suit in a court of Minnesota because it did not, before writing the policy, comply with the provisions of the Minnesota law relating to foreign insurance companies doing business within the State. After proceedings which it is unnecessary to detail, 166 Minn. 285, the trial court sustained that defense. Compare *Seamans* v. *Christian Bros. Mill Co.*, 66 Minn. 205. Its judgment was affirmed by the highest court of the State. 169 Minn. 516. This Court granted a writ of certiorari. 273 U. S. 689.

The statutes of Minnesota provide that a foreign insurance company shall not do business within the State unless it secures a license so to do; and that to this end it must file a copy of its charter and by-laws and a statement showing its financial condition; must appoint the Insurance Commissioner its attorney in fact upon whom proofs of loss and process in any action may be served; and must make a deposit of securities (or its equivalent) for the protection of Minnesota policy holders, G. S. 1923, §§ 3313, 3318, 3319, 3711, 3713, 3716. The statutes further require that

all persons engaged in the solicitation of applications of insurance shall be licensed; and they declare specifically that it shall be unlawful for any person, firm or corporation to solicit or make or aid in the soliciting or making of any contract of insurance not authorized by the laws of the State, and that any person, firm, or corporation not complying with the requirements as to the licensing of agents and solicitors shall be guilty of a misdemeanor, G. S. 1923, §§ 3314, 3348, 3349, 3366.

It is stipulated that the Company did not comply with the requirements of the Minnesota law; and that the contract was effected by the Company's sending a representative into the State who solicited the insurance there, by the defendant's filling out in Minnesota one of the blank forms for application distributed by the Company's agent there, and by the defendant's then mailing it, together with a check for the first premium, to the Company's office in Maryland, upon receipt of which the policy was signed by the Company in Maryland and mailed to the defendant.

The receivers rely upon *Allgeyer* v. *Louisiana,* 165 U. S. 578, and *St. Louis Cotton Compress Co.* v. *Arkansas,* 260 U. S. 346. Their contention is that, since the contract was made in Maryland, it was not subject to the prohibitions of the Minnesota law; that the contract was valid where made; and that, hence, Minnesota may not refuse the aid of its courts for enforcing it. Those cases are not applicable. They hold that a State may not prohibit either a citizen or a resident from making a contract—in other words, doing an act—in another State. The defense here rests upon a wholly different ground. It is that the making of the contract involved, and the performance of the contract required, the doing in Minnesota of acts which its laws prohibited; and that the contract contemplated the Company's doing there still other forbidden acts.

A contract of insurance, although made with a corporation having its office in a State other than that in which the insured resides and in which the interest insured is located, is not interstate commerce. *New York Life Insurance Co.* v. *Deer Lodge County,* 231 U. S. 495; *National Union Fire Insurance Co.* v. *Wanberg,* 260 U. S. 71, 75. Hence, Minnesota had the power to prohibit the Employers' Mutual Company from doing business within the State without first complying with the prescribed conditions; and could

refuse the aid of its courts in enforcing a contract which involved violation of its laws, *Chattanooga Building & Loan Assoc.* v. *Denson*, 189 U. S. 408; *Interstate Amusement Co.* v. *Albert*, 239 U. S. 560. See also *Munday* v. *Wisconsin Trust Co.*, 252 U. S. 499. The parties had, under the *Allgeyer* and *Cotton Compress* cases, the constitutional right to make in Maryland a contract of insurance despite a prohibition of the Minnesota law. But the Company, a foreign corporation, had no constitutional right to solicit the insurance in Minnesota by means of an agent present within that State. For the act of solicitation there the State might have punished the agent; and also the Company as principal. *Hooper* v. *California*, 155 U. S. 648; *Nutting* v. *Massachusetts*, 183 U. S. 553. Compare *Commonwealth* v. *Nutting*, 175 Mass. 154. As the contract was not a later independent act, but grew immediately out of the illegal solicitation, and was a part of the same transaction, being inseparably tied to it by the use of the application blank illegally distributed, the contract was tainted with the illegality. *Armstrong* v. *Toler*, 11 Wheat. 258. Because of such taint the State, under rules of general application, would have had the right to refuse to enforce it, although made in Maryland, even if it had been wholly unobjectionable in its provisions. Compare *Delameter* v. *South Dakota*, 205 U. S. 93, 97-103; *American Fire Insurance Co.* v. *King Lumber Co.*, 250 U. S. 2, 11-12.

But the contract was also in its terms obnoxious to the Minnesota law. It required the Company to perform, in Minnesota, acts which it was prohibited from doing there. The Company agreed to defend, on behalf of the insured, any suits or other legal proceedings brought by striking employees against the insured to enforce claims arising out of any strike, and to pay any expenses incurred by the Company in so doing. This covenant necessarily involved performance in Minnesota, as suits against the insured would be brought in that State, among other reasons, because it was a Minnesota corporation and had no place of business elsewhere. The Company also covenanted to indemnify the insured for "direct loss of average daily net profits and fixed charges" due to strikes. The contract did not specify the place where payment for the loss should be made, so that under the common rule the insurer would be required to make the payment in Minnesota,

the domicile of the insured. *Pennsylvania Mutual Fire Insurance Co.* v. *Meyer,* 197 U. S. 407, 416.

Besides these acts which the Company bound itself to perform in Minnesota, the contract reserved to it the right to do, in Minnesota, and the Company contemplated doing there, other acts forbidden by its laws, namely, the right to inspect the plant and the books of account and papers of the business; and the right to interrogate persons connected with it. Moreover, the contract clearly contemplates that not only these examinations, but the appraisals and other acts provided to be done by the Company in the course of the adjustment of losses, shall be done in Minnesota. All these things were activities of the insurance business which the Company was prohibited by valid statutes from doing within the State. *Pennsylvania Lumbermen's Mutual Fire Insurance Co.* v. *Meyer, supra,* pp. 414-5. Compare *Commercial Mutual Accident Co.* v. *Davis,* 213 U. S. 245, 256. Under rules of law generally applicable a State may refuse to enforce a contract which provides for doing within it an act prohibited by its laws. Compare *The Kensington,* 183 U. S. 263, 269; *Bond* v. *Hume,* 243 U. S. 15, 21; *Union Trust Co.* v. *Grosman,* 245 U. S. 412, 416; *Grell* v. *Levy,* 16 C. B. (N. S.) 73.

It is suggested that under a Maryland statute the petitioners are not mere equity receivers but quasi-assignees, and that this places them on a different footing from that which the insurance company would have occupied if the suit had been brought by it. In support of this contention, the full faith and credit clause of the Constitution and cases such as *Converse* v. *Hamilton,* 224 U. S. 243, are invoked. But the Maryland statute was not set up in the state courts, and as they did not take judicial notice of it, it will not be noticed here. *Hanley* v. *Donoghue,* 116 U. S. 1; *Gasquet* v. *Lapeyre,* 242 U. S. 367, 371. For this and other reasons we have no occasion to enquire into its effect.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.